KEYNOTE ADDRESS

History and Jurisprudence of the *Maqāṣid*: A Critical Appraisal

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Abstract

This article, which was originally delivered as a keynote address at the AJIS symposium on "Theory and Uses of *Maqāṣid al-Sharī'a*" in May 2021, begins with a review of the Qur'an and Sunna on the *maqāṣid*, followed by a similar review of the history of *maqāṣid* and salient contributors to its jurisprudence, while drawing attention to its prolonged marginalization in legal theory. The recent revival of *maqāṣid* in the latter part of the twentieth century is reviewed next, followed by a note on the special appeal of the *maqāṣid*, the end of their historical neglect,

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and a great deal of renewed interest by contemporary Muslim scholars. The relationship of *uṣūl al-fiqh* to *maqāṣid* has also been the subject of renewed interest, as to whether it is one of continued domination or one of complementarity between them. Then follows a section on the classification of *maqāṣid*, how they are appraised and prioritized in relationship to one another; and a review of methodological indicators that can help with the appraisal and ranking of the *maqāṣid* and their application to new issues. The article concludes with an account of *ijtihād maqāṣidi* and its application to contemporary issues.

Maqāṣid in the Qur'an and Sunna

The Qur'an is expressive of *maqāṣid* when it singles out the most important purpose of the Prophethood of Muhammad (peace be upon him) in such terms as: "We have not sent you but a mercy to the worlds" (Q. 21:107). This can also be seen perhaps in the Qur'an's characterization of itself as "a healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers" (Q. 10:57). The two uppermost objectives of compassion (*raḥma*) and guidance (*hudā*) in these verses are then substantiated by other verses and hadiths that seek to establish justice, eliminate prejudice, and alleviate hardship. The Qur'an and Sunna also promote cooperation and mutual support within the family and community. Justice itself is a manifestation of God's mercy as well as an objective of the sharī'a in its own right. Compassion is manifested in the realization of benefits, which the Muslim jurists have generally considered to be the all-pervasive purpose of sharī'a that is almost synonymous with *raḥma*.

More specifically, when the text expounds the rituals of *wuḍū'* (ablution for prayer) it follows on to declare that "God does not intend to inflict hardship on you. He intends cleanliness for you and to accomplish His favour upon you" (Q. 5:6). With regard to the prayer itself, it is declared that "truly *ṣalāt* obstructs promiscuity and evil" (Q. 29:45). With reference to jihad, the Qur'an proclaims its purpose as: "permission is granted to those who fight because they have been wronged" (Q. 22:39).

With reference to just retaliation (*qiṣāṣ*), the text similarly declares that "in *qiṣāṣ* there is life for you, O people of understanding" (Q. 2:179); and with regard to the poor-due (*zakāt*), the text validates it "so that wealth does not circulate only among the wealthy" (Q. 59:7).

Maqāṣid al-Sharīʿa: History and Salient Contributors

The *maqāṣid* did not receive much attention in the early stages of the development of Islamic legal thought and, as such, represent a somewhat belated addition. Reputable textbooks on the *uṣūl al-fiqh* did not even mention the *maqāṣid* in their usual coverage of topics. This is partly due to a certain circumspection of the *fiqh* and *uṣūli* scholars over the *maqāṣid*, which is largely concerned with the purposes and philosophy of the law (*ḥikmat al-tashrīʿ*), rather than the letter of its text. Although the *maqāṣid* are obviously relevant to *ijtihād*, they were not treated as such in conventional expositions. The longer history of *maqāṣid* has thus been a checkered one due mainly to the dominance of *uṣūl al-fiqh* and its textualist orientations.

Islamic legal thought is broadly preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of *uṣūl al-fiqh* has advanced that purpose to a large extent. The literalists tended to view the sharīʿa as a set commands and prohibitions that competent persons (*mukallafīn*) had to observe in the spirit of submission without enquiring into their intentions and purposes. This attitude stood in contrast with the fact that the Qur'an itself exhibited considerable awareness of the underlying purposes of its laws and often expounded their rationale. The leading Companions of the Prophet also tended to view the sharīʿa both as a set of rules and a value system wherein specific rules were seen as the carriers of higher values. Yet due to the development of scholastic jurisprudence during the first three Islamic centuries, the *maqāṣid* were marginalized. It was not until Abu Hamid al-Ghazali (d. 505/1111) and then Ibrahim al-Shatibi (d. 790/1388) that the *maqāṣid* gained better recognition.

The basic outlook of the *maqāṣid* was not denied by the leading schools and scholars of Islamic law, yet they still remained on the fringes

of mainstream juristic thought. Except for the Zahiris, who maintained that the *maqāṣid* are only known when they are so identified by the clear text, the majority of jurists did not confine them to the clear text alone—for they understood the sharīʿa to be goal-oriented and founded in identifiable causes. A mere conformity to rules that went against their purposes was, therefore, considered unacceptable. A totally different approach to the *maqāṣid* was taken by the *bāṭiniyyah* who held, contrary to the Zahiris, that the essence and purpose of the textual injunctions (*nuṣūṣ*) were to be found, not in the explicit words of the text, but in its inner (*bāṭin*) meaning known only to the Imam.[1] There were also differences of orientation among the leading schools regarding the *maqāṣid*: some were more open to them than others, but elaboration into the goals and purposes of sharīʿa was generally not encouraged. This juristic reticence over the *maqāṣid* might have partly been due to the elements of projection and prognostication that such an exercise was likely to involve. Who could tell, for sure, for example, that this or that is the purpose and overriding objective of the Lawgiver, without engaging in a degree of speculation—unless of course the text itself declared it so? But then, to confine the *maqāṣid* only to the clear text was also not enough.

It was not until the early fourth Islamic century that *maqāṣid* were used in, for instance, the juristic writings of Abu ʿAbd Allah al-Tirmidhi al-Hakim (d. 320/932). Recurrent references to it later appeared in the works of Imam al-Haramayn al-Juwayni (d. 478/1085), who was the first to classify the *maqāṣid* into the three categories of essential, complementary, and embellishments (*ḍarūriyyāt, ḥājiyyāt, taḥsīniyyāt*) that has gained recognition ever since. Al-Juwayni's ideas were further developed by his pupil, Abu Hamid al-Ghazali, who wrote at length on public interest (*manfaʿah*) and ratiocination (*taʿlil*). Al-Ghazali was generally critical of *manfaʿah* as a proof but validated it if it promoted the *maqāṣid* of sharīʿa. As for the *maqāṣid* themselves, al-Ghazali wrote categorically that the sharīʿa protected five objectives as a matter of priority: namely faith, life, intellect, lineage, and property.[2]

A number of prominent scholars continued to contribute to the *maqāṣid.* Sayf al-Din al-Amidi (d. 631/1233) identified the *maqāṣid* as a criterion of preference (*al-tarjīḥ*) among conflicting analogies and elaborated

on an internal order of priorities among the various classes of *maqāṣid*. Al-Amidi also confined the essential *maqāṣid* to only five. The Maliki jurist Shihab al-Din al-Qarafi (d. 684/1285) added a sixth to the existing list, namely the protection of honour (*al-ʿird*), and this was endorsed by Taj al-Din ʿAbd al-Wahhab ibn al-Subki (d. 771/1370) and later by Muhammad ibn ʿAli al-Shawkani (d. 1250/1834). Al-Ghazali's list of the five essential *maqāṣid* was based on his reading of the relevant parts of the Qur'an and the Sunnah on the prescribed penalties (*ḥudūd*). The value that each of these penalties sought to vindicate was consequently identified as an essential value. Al-Qarafi's latest addition (*al-ʿird*) was initially thought to have been covered under lineage (*al-nasl,* also *al-nasab*), but he explained that the sharīʿa had enacted a separate *hadd* punishment for slanderous accusation (*al-qadhf*), which justified the addition.[3] ʿIzz al-Din ʿAbd al-Salam al-Sulami's (d. 660/1262) renowned work, *Qawāʿid al-Aḥkām*, was in his own characterization a work on "*maqāṣid al-aḥkām*" and addressed the various aspects of the *maqāṣid* especially in relationship to the *ʿillah* (effective cause) and *manfaʿah* (public interest) in greater detail. Thus he wrote at the outset of his work that "the greatest of all the objectives of the Qur'an is to facilitate benefits (*manafiʿ*) and the means to secure them and that the realization of benefit also included the prevention of evil."[4] Al-Sulami added that all the obligations of sharīʿa (*al-takālīf*) were predicated on securing benefits for the people in this world and the next. For God Most High is Himself in no need of benefits. The sharīʿa is, therefore, concerned, from beginning to end, with the benefits of God's creatures—which is also the "mega *maqṣad*" of sharīʿa.

Revival of *Maqāṣid* Since the 1980s

Maqāṣid became the focus of renewed attention during the closing decades of the twentieth century, which saw unprecedented developments that may be divided into five phases as follows. The first of these was exploratory and historical. Literature that fell under this category mainly consolidated the works of previous scholars on the subject. Much attention was thus paid to the contributions of Imams Malik and al-Shafiʿi, and those of Imam al-Haramayn al-Juwayni, Abu Hamid al-Ghazali,

ʻIzz al-Din Abd al-Salam, Ibn Taymiyyah, Ibn Qayyim al-Jawziyyah, and many others. The Maliki scholar Abu Ishaq Ibrahim al-Shatibi's work, *al-Muwāfaqāt*, stands out as a landmark contribution to the subject.

The second phase in the scholarly writings on *maqāṣid* paid attention mainly to epistemology and construction of a comprehensive theory of *maqāṣid*. This has involved reflections on the methodology of *maqāṣid* that consists of its definition, sources and methods of identification, conditions of validity, classification, and the means (*wasā'il*) by which the *maqāṣid* are realised and implemented. Much attention is also paid in this phase to the relationship of *maqāṣid*, *uṣūl al-fiqh,* and *ijtihād*. Even though scholarly contributions to the methodology of *maqāṣid* started at an early stage and important developments took place, it still remains a work in progress.

The third phase under review is marked by the use of *maqāṣid* as an evaluative tool by which to measure the accuracy or otherwise of the existing interpretations of sharīʻa. *Maqāṣid* have a role to play regarding the existing interpretations of the Qur'an and Sunna, for instance, and how some of the *tafsīr* works tend to be dominated by a degree of literalism at the expense of the higher purposes of the text. The same effort is then extended to other areas of the sharīʻa, including the *uṣūl al-fiqh*, criminal law, commercial law, and so forth, leading in some cases to a re-evaluation of the existing interpretations. Only some progress on selected themes has been made regarding the *uṣūl al-fiqh* and commercial law with reference to Islamic banking and finance (IBF), but much of this too is a work in progress. There is a great show of interest in the *maqāṣid* but when it comes to implementation, it is the more conventional rules of applied law or *fiqh* that are usually implemented, partly due to the fact that the *maqāṣid* articulate a set of values but not actual legal rulings. The *maqāṣid* as such may be more influential at the level of policy making, legislation, and *ijtihād*.

The fourth phase in the development of *maqāṣid* is concerned with their implementation in the various areas of concern to *sharīʻa*. The available literature in this field identifies correct procedures for the application of *maqāṣid*, often involving changes in the older approaches that followed conventional interpretations. This aspect of the *maqāṣid* is also

concerned with coming to grips with the rapid changes often brought by technology and science, post-modernity and globalization, often at the expense of the higher purpose of sharīʿa. This has stressed in turn the need for innovative ijtihād for the application of *maqāṣid* to particular subjects. Modern writings on *maqāṣid*, dissertations, book chapters and articles, study courses and conferences continue to manifest the revival of *maqāṣid*. A significant body of literature covering different aspects of the subject has consequently developed. The *maqāṣid* discourse has also become multi-disciplinary as it is no longer confined to law and jurisprudence but extends to humanities, social and natural sciences, banking and finance, and so forth.

Interesting developments are also taking place in IBF wherein the regulatory authorities are showing interest in the implementation of *maqāṣid*, yet uncertainties are encountered in how this can be done. This is partly due to the fact that the *maqāṣid* have largely remained theoretical. Whether one speaks of the essential *maqāṣid* (*ḍarūriyyāt*), or complementary *maqāṣid* (*ḥājiyyāt*), how they can be integrated into the IBF practices and products often raises new questions. A basic critique often encountered here is that the Islamic banks practice the *fiqh* rules but tend to turn a blind eye to the purposes of those rules, that the IBF is littered by *riba*-oriented practices and need to be aligned with the *maqāṣid* of *sharīʿa*. A certain shortfall is also noted regarding the application of *maqāṣid* to particular contracts. What are the *maqāṣid*, one might ask, of *murābahah* (cost plus profit sale) and that of the deferred sale (BBA), or of *mushārakah* and *mudārabah*, etc., contracts that are largely practiced in IBF? These questions need to be answered, in our view, before one can meaningfully speak of the implementation of *maqāṣid* in the IBF operations. Parallel interest-levels in the implementation of *maqāṣid* are noted in the fields of bioethics, genetic engineering and genetically modified organisms (GMOs), information technology and so forth—all raising questions on how they can be meaningfully brought into conformity with the *maqāṣid* of *sharīʿa*.

The last of the five phases is a rather negative one, marked by excessive referencing to *maqāṣid* by those who mention the word without much understanding of it. Anyone who likes an idea then claims it to be

one of the *maqāṣid*! This kind of excess in the use of *maqāṣid* is a problem. Scholars and writers, universities and the media should make an effort to enhance accuracy in the uses of *maqāṣid*. Further improvement in the methodology of *maqāṣid* will also serve as a check on arbitrariness in the use of *maqāṣid*.

Maqāṣid and *Uṣūl al-Fiqh*

The historical neglect of *maqāṣid* is brought into sharp relief by El-Messawi, who wrote about a doctoral candidate at al-Azhar University in the late 1960s who had to change the title of his dissertation that included the word '*maqāṣid*'. He had to then use the word *ahdāf* instead, as the former did not appeal to some members of the examining committee who were suspicious of *maqāṣid*. Since that time, many of the *uṣūl al-fiqh* doctrines such as consensus (*ijmā'*), analogy (*qiyās*) and even *ijtihād* have also become burdened with difficult conditions. The *maqāṣid* are seen, instead, to relate well to the wider concerns of modernity and civilization.[5] As for the relationship of *maqāṣid* to *uṣūl al-fiqh,* some commentators thought of them as complementary and noted that the *uṣūl al-fiqh* should act as a facilitator of *maqāṣid*. Hasan Jabir thus observed: while the *uṣūl al-fiqh* shows the ways of extracting rules from the Qur'an, this was by itself not enough without the aid of the *maqāṣid*, if the Qur'an and Sunna were to guide the *ummah* during new times and climes. This would necessitate studying the primary sources in light of the broader universals of *maqāṣid*.[6]

Bin Bayyah's opinion on the relationship of *uṣūl al-fiqh* to *maqāṣid* is that they are inseparable from one another, albeit that *maqāṣid* are a distinctive chapter in the larger matrix of *uṣūl al-fiqh*, alongside other chapters such as *istiṣlāḥ* and *qiyās*. Ibn 'Ashur thought, on the other hand, that the *maqāṣid* should be accorded an independent status. Having discussed both Ibn 'Ashur and Bin Bayyah, al-Raysuni sided with the former, adding that the *maqāṣid* are being taught as a separate course at many universities in Morocco, Algeria, Mauritania, Pakistan, Saudi Arabia, al-Azhar of Egypt, and elsewhere, and treated as a distinctive subject in its own right.[7]

Ibn Ashur's plea for the independence of *maqāṣid* was not entirely without precedent, however, as earlier scholars (including al-Qarafi, Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah) had made comments that pointed in the same direction.[8] A critic suggested that al-Shatibi had not given the *maqāṣid* independent status when he discussed them in the fourth volume of his four-volume *al-Muwāfaqāt*; that in effect he had treated it as an extension of *uṣūl al-fiqh.* Al-Shatibi had, in other words, accentuated the importance of *maqāṣid* without claiming that it was either separate or independent.[9]

Varied Classifications of *Maqāṣid*

Muslim jurists have classified the entire range of *maqāṣid* into three categories in descending order of importance, beginning with the essential *maqāṣid* (*ḍarūriyyāt*), followed by the complementary purposes (*ḥajiyyāt*,) and then the embellishments (*taḥsīniyyāt*). The essential *maqāṣid* are indispensable to normal order in society as also the survival and well-being of individuals—their destruction will precipitate collapse of the normal order. The *sharī'a* protects these values and takes measures for their preservation and advancement. Jihad is thus validated in order to protect religion, and so is just retaliation (*qiṣāṣ*) to protect life. Theft, adultery and wine-drinking are punishable offences as they pose a threat to the protection of property, the family, and rationality respectively. Furthermore, the *sharī'a* encourages work and trading activity in order to enable the individual to earn a living, and it takes measures to ensure the smooth flow of commercial transactions in the market. Islamic family laws are likewise an embodiment largely of guidelines that make the family a safe refuge for all of its members. *Sharī'a* also encourages pursuit of knowledge and education to ensure the people's intellectual well-being, the advancement of arts, and civilization. All of the laws of *sharī'a* are, in other words, related to the protection of these five universal *ḍarūriyyāt.*

The complementary purposes (*ḥājiyyāt*) are mainly designed to remove severity and hardship that do not, however, pose a threat to the survival of normal order. A great deal of the *sharī'a* concessions (*rukhas*),

such as the shortening of the obligatory prayer (*ṣalāt*) and breaking the Ramadan fast which the sharīʿa has granted to the sick, disabled, elderly and traveler etc., are aimed at preventing hardship, but they are not essential since people can live without them if they had to. The sharīʿa has granted such concessions in almost all the areas of obligatory worship (*ʿibādāt*). In the sphere of civil transactions (*muʿāmalāt*), the sharīʿa has validated certain contracts, such as the forward sale (*salam*) and lease and hire (*ijārah*) because the people's need for them notwithstands a certain anomaly that is attendant in both. In family law the *sharīʿa* permits divorce in situations of necessity by way of a concession, which is aimed at ensuring the well-being of the family against intolerable conflict.

A complementary purpose is elevated into an essential one when it concerns the public at large. For example, the validity of *ijārah* may be of secondary importance to an individual but it is an essential interest for the society at large. Similarly, certain concessions that are granted in worship matters (*ʿibādāt*) may be secondary to the survival of an individual but become a matter of primary importance for the community as a whole. In the event of a conflict arising between these various classes of purposes, the lesser ones may be sacrificed in order to protect the greater ones. When there is a plurality of conflicting interests and none appears to be preferable, then, according to a legal maxim, "prevention of harm takes priority over the realization of benefit."[10] This is because the sharīʿa is more emphatic on the prevention of harm, as can be seen in the *hadith* where the Prophet (peace be upon him) said: "When I order you to do something, do it to the extent of your ability, but when I forbid you from something, then avoid it (altogether)."[11]

The third class of "desirable" *maqāṣid* seek to attain refinement and perfection in the customs and conduct of people at all levels of achievement. *Sharīʿa* thus encourages cleanliness of body and attire for purposes of prayer and recommends, for instance, the wearing of perfume when attending congregational Friday prayers; as it also discourages the consumption of raw garlic on that occasion. In customary matters and relations among people, *sharīʿa* encourages gentleness (*rifq, samāḥah*), pleasant speech and manners (*ḥusn al-khuluq*), and fair dealing (*iḥsān*). The judge and head of state are similarly advised not to be too eager in

the enforcement of penalties. The purpose of all this is attainment of beauty and perfection in people's lives.

The embellishments are perhaps of special importance, as they relate to all of the higher *maqāṣid*. One can perform the obligatory prayer, for example, with proper concentration and giving each of its parts their due, or perform it in a hasty and thoughtless manner, and the difference between them is that the first is espoused with the attainment of both the essential and the desirable, and the second can at best be a discharge of duty. One can extend this analysis to almost every area of human conduct and implementation of almost all of the rulings of *sharīʿa*. The classification of *maqāṣid* as such need not be confined to the *sharīʿa* injunctions or to religious matters but can extend to customary, social, political, economic, and cultural affairs and so forth. From this analysis, it also appears that classifying a certain purpose or interest under one or the other of these categories is likely to be relative and involve a degree of value judgment.

Maqāṣid have been further classified into the general purposes (*al-maqāṣid al-ʿāmmah*) and particular purposes (*al-maqāṣid al-khāṣṣah*). The former are those that characterize the whole of Islam and sharīʿa, as they are on the whole broad and comprehensive. Prevention of harm (*ḍarar*) is a general goal of sharīʿa, and applies to all areas and subjects. Particular purposes are theme-specific and relate to specific subjects, such as family matters, financial transactions, witnessing, and the like.

Maqāṣid are further classified into the definitive (*al-qatʿiyyah*) and speculative purposes (*al-ẓanniyah*). The former are supported by clear evidence in the Qur'an and Sunna, such as protection of property and honor of individuals, administration of justice, right to financial support among close relatives, and the like. *Maqāṣid* that relate evidently to *daruriyyat* may be regarded as definitive (*qatʿi*). Those that are identified by induction (*istiqrāʾ*) from the clear injunctions (*nuṣūṣ*) may also be added to this category. As for the *maqāṣid* that cannot be included in either of these two categories, they may still be seen as definitive if there be general consensus or clear legislation in their support. Additional *maqāṣid* that are identified outside this range may be classified as speculative (*ẓannī*), and may remain in that category unless they are elevated to

the rank of definitive through consensus or legislation. In the event of a clash between objectives, the definitive *maqāṣid* take priority over the speculative. An order of priority is also suggested among the definitive *maqāṣid* in favor of those which preserve faith and life over the other three, and protection of the intellect is also prioritized over the family and property.

Al-Shatibi has also classified the *maqāṣid* into the aims and purposes of the Lawgiver (*maqāṣid al-shari'*) and the human purposes (*maqāṣid al-mukallaf*). To say that securing human welfare is God's illustrious purpose behind the laws of sharī'a illustrates the former, whereas acquisition of knowledge in order to gain employment illustrates the latter class of *maqāṣid*.

Maqāṣid have also been classified into the primary objectives (*maqāṣid aṣliyyah*) and subsidiary goals (*maqāṣid tab'iyyah*). The former refer to the primary and normative goals that the Lawgiver, or a human agent, has originally intended. For example, the primary purpose of knowledge (*'ilm*) is to know God and the proper manner of worshipping Him and also to explore and understand His creation. The secondary goals are those which complement and support the primary ones. The primary purpose of marriage is procreation, for example, whereas its secondary purpose may be sexual satisfaction.[12]

Notwithstanding the foregoing, some arbitrariness may be difficult to avoid in such classifications. Like the benefits (*maṣāliḥ*), the *maqāṣid* are open-ended and still in need of a more accurate methodology to ensure unwarranted indulgence through personal or partisan bias. This is a matter largely of correct understanding, so collective *ijtihād* and consultation seem the best ways of ensuring accuracy and precision. To this end it would be reassuring to secure the advice and approval of a learned council on the veracity of a *maqṣad* for policy-making and legislation.

Identification of *Maqāṣid*

As already indicated, Muslim jurists have differed in their approaches to identifying *maqāṣid*. The first approach to be noted is the textualist approach, which confines the identification of *maqāṣid* to clear scriptural

sources. The *maqāṣid*, according to this view, have no existence outside this framework. Provided that a command is explicit and normative (*taṣrīḥī, ibtidā'ī*), it conveys the objective/*maqṣad* of the Lawgiver in the affirmative sense. Prohibitions are indicative of the *maqāṣid* in the negative sense in that the purpose of a prohibitive injunction is to suppress and avert the evil that the text in question has contemplated. This is generally accepted, but there are certain tendencies within this general framework. While the Zahiris tend to confine the *maqāṣid* to the obvious text, the majority of jurists takes into consideration both the text and the effective cause (*'illah*) and rationale of the text.[13] The chief exponent of the *maqāṣid*, al-Shatibi, has spoken affirmatively of the need to observe the explicit injunctions, but then added that adherence to the obvious text should not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. Rigidity of this kind, al-Shatibi added, was itself contrary to the objective (*maqṣad*) of the Lawgiver, just as would be the case with regard to neglecting the clear text itself. When the text, whether a command or prohibition, is read in conjunction with its objective and rationale, this is a firm approach, one that bears harmony with the intention of the Lawgiver.[14] Al-Shatibi added that the *maqāṣid* known from a comprehensive reading of the text are of two types, namely primary (*aṣliyyah*) and secondary (*tab'iyyah*). The former are the essential *maqāṣid* or *ḍarūriyyāt*, which the *mukallaf* must observe and protect regardless of personal predilections, whereas the secondary *maqāṣid* are those which leave the *mukallaf* with some flexibility and choice.

As noted earlier, al-Shatibi has identified induction (*istiqrā'*) as one of the most important methods of identifying the *maqāṣid*. There may be various textual references to a subject, none of which may be decisive. Yet their collective weight is such that leaves little doubt as to the meaning they convey. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. Al-Shatibi illustrates this by saying that nowhere in the Qur'an is there a declaration to the effect that the *sharī'a* has been enacted for the benefit of the people. Yet this is a definitive conclusion drawn from the collective reading of a variety of textual proclamations.[15] Al-Shatibi then adds that benefits should be

understood in their broadest sense that include all benefits pertaining to this world and the hereafter, those of the individual and the community, material, moral and spiritual, and those which pertain to the present as well as the interests of the future generations. This broad meaning of benefits also includes the prevention and elimination of harm. These benefits cannot always be ascertained by the human reason alone, without the aid and guidance of divine revelation.[16]

On a similar note, the ruling of the *sharīʿa* that the validity of an act of devotion (*ʿibāda*) cannot be established by means of *ijtihād* is an inductive conclusion drawn from the detailed available evidence on the subject, as there is no specific injunction in the sources to that effect. These conclusions are of great overall importance; they are not open to doubt, nor is their credibility a matter of speculative reasoning.[17]

Al-Shatibi's inductive method is not confined to the identification of purposes but also extends to commands and prohibitions, which may either be obtained from the clear text, or from a collective reading of a number of textual proclamations that may occur in a variety of contexts.[18] Al-Shatibi then goes a step further to say that the inductive conclusions and positions so established are the general premises and overriding objectives of the *sharīʿa*, and thus have a higher order of importance than specific rules. It thus becomes evident that induction is the principal method al-Shatibi employs (and his signal contribution) for identifying the *maqāṣid*.

Conditions of Validity

In order to be valid, a *maqṣad* must qualify certain conditions, which Ibn ʿAshur identified as follows: 1) certain (*thābit, yaqīnī*), which means that the *maqṣad* in question is clear and proven by strong evidence and not subject to disagreement and disputation; 2) apparent (*ẓāhir*), in that the *maqṣad* in question is not a hidden factor but evident and can be shown and brought to attention when challenged, for instance, by academia or before a court; 3) general (*ʿāmm*), in that it applies to all that fall within its ambit and it is not focused on particular individuals, groups or partisan interests; and 4) exclusive (*tard*), in that it includes all that belongs

to it, and excludes all that does not. Then it is further added that the intended purpose must not exceed the limits of moderation, and entails neither laxity nor hardship.[19]

When these conditions are applied to particular subjects, say of good governance, peace, and sustainable development, all three would, in principle, seem to qualify but may each raise more particular questions. In the case of good governance, for instance, what are the essential requirements of good governance that merit consideration? Commentators may well differ over the meaning and structure of an Islamic state or government, and whether constitutionalism and rule of law can be included under its heading. One would need a good knowledge of the subject to be able to fulfil Ibn ʿAshur's conditions; but we still say in principle that good governance is an important *maqṣad*, without claiming certainty over all its details. Even with regard to the five essential purposes (*ḍarūriyyāt*), they are *ḍarūrī* in principle but certainty can hardly be claimed over all their related details.

As for the textual guidelines on good governance, broadly the Qur'an denounces oppressive and corrupt rulers, commands justice and observance of all the commands and prohibitions, and demands respecting people's rights and obligations—which can hardly be realized without good governance. This may perhaps provide a tentatively affirmative response, perhaps based on inductive reasoning, that good government is indeed a requirement and therefore a valid *maqṣad* of *sharīʿa*, without specifying at this point whether it is an essential or a complementary purpose. Whereas good government is, in the present writer's view, an essential purpose in principle, other (more detailed) aspects of good government may qualify as complementary or as only desirable. There are guidelines in the legal maxims of fiqh (*qawāʿid kulliyyah fiqhiyyah*) and wider structure of *sharīʿa* that may be of help in providing the needed responses.

Questions over the identification of *maqāṣid* may be relatively easier to address in relationship to contracts and transactions, as the basic *fiqh* literature on nominate contracts provides the raw materials to work with. But the same question becomes somewhat more challenging in relationship to newer topics, such as 'sustainable development,' or

'protection of the environment.' For reasons already expounded above, the *fiqh* literature on the *maqāṣid* is not without its own ambiguities, leaving researchers with little choice but to explore fresh responses to pressing questions.

Widening the Scope of *Maqāṣid*

Taqi al-Din ibn Taymiyyah (d. 728/1328) was the first to depart from the notion of confining the *maqāṣid* to a specific number. He added, to the existing list of the *maqāṣid*, such other values as fulfilment of contracts, preservation of the ties of kinship, honoring the rights of neighbors, the love of God, sincerity, trustworthiness, and moral purity.[20] Ibn Taymiyyah thus revised the scope of *maqāṣid* from a designated number into an open-ended list of values. His approach is generally accepted by contemporary scholars, including Muhammad Tahir Ibn 'Ashur, Ahmad al-Raysuni, Yusuf al-Qaradawi and others.[21] Al-Qaradawi has also included social welfare support (*al-takāful al-ijtimā'ī*), freedom, human dignity, and human fraternity among the *maqāṣid* of *sharī'a*, on the analysis that these are all upheld by both the detailed and the overall weight of evidence in the Qur'an and Sunna.[22] The present writer has proposed to add economic development and strengthening of research and development in technology and science to the existing *maqāṣid*, as they are crucially important to the standing of the *ummah* in the world community. It thus appears that the *maqāṣid* remain open to further enhancement that will depend, to some extent, on the priorities of every society and generation.

The unprecedented advance of modernity, technology, and science has brought human societies almost everywhere face to face with new issues, which are broadly not addressed in the existing *fiqh* texts. Questions thus arise about whether one can consider peace and security, women's rights, rights of minorities, protection of the environment, and the United Nations Sustainable Development Goals (SDG) among the *maqāṣid* of our time for the Muslim community. These are admittedly not simple monolithic themes and may call for fuller understanding before adequate responses can be given. What is quite obvious is the need that

the *maqāṣid* discourse be moved beyond its conventional typologies to address new and pressing issues of great importance to contemporary Muslims and Islamic civilization.

Appraisal and Ranking

The relative strength or weakness of the various types of *maqāṣid* in relationship to one another and its reference to the rulings/*aḥkām* of *sharīʿa* is a subject on which the *maqāṣid* literature remains under-developed. For the rulings of *sharīʿa* found in the Qur'an, Sunna, and juristic *ijtihād* are not evaluated nor prioritized in the light of their *maqṣad*. The question, for instance, as to which are the original and normative purposes (*maqāṣid aṣliyyah*) as opposed to those that may be classified as subsidiary goals (*maqāṣid farʿiyyah*) and even the distinction between the means and the ends of a *maqṣad* can sometimes be less than self-evident. Ibn ʿAshur has observed in this connection that except for some occasional references made to them by ʿIzz al-Din ʿAbd al-Salam al-Sulami in his *Qawāʿid al-Aḥkām* and Shihab al-Din al-Qarafi in his *Kitāb al-Furuq*, appraisal of the various classes of *maqāṣid* has largely remained wanting of development.[23] Early contributions to this subject are confined to a classification of themes into the renowned five or six headings of the essential goals (*ḍaruriyyāt*) whereas the other two categories of the complementary (*ḥajiyyāt*) and the embellishments (*taḥsīniyāt*) are not thematically identified in any order or number. This triple classification contemplates the intrinsic merit of the *maqāṣid* involved. Questions may also arise as to where, for example, can personal freedom or equality be placed in this classification. It is even possible, indeed likely, that equality and freedom be placed under both the necessary and normative *maqāṣid* (*ḍarurī, aṣlī*) and would as such stretch across categories.

There are other indicators that can also be used to help with identifying the correct placement of the various rulings of *sharīʿa*, its commands and prohibitions, rights and duties, etc., under one or the other of the *maqāṣid* categories. These indicators are summarized as follows:

1 The presence or absence of a text or a textual indicator in the Qur'an, hadith or the precedent of Companions may provide important

pointers to help determining the grade and value of a ruling or *maqṣad* and its placement under a relevant classification.

2 Another indicator is to refer to the benefit (*manfaʿa*) or the mischief (*mafsada*) a particular *ḥukm* is likely to realize or prevent. This would involve a rational evaluation of benefits and harms in the light of prevailing social conditions. One may need to ascertain whether the benefit in question is comprehensive and general (*kullī*) that concerns the largest number of people and relates to a vital aspect of life, or whether it is a partial benefit (*juz'ī*) that lacks those attributes. To promote justice is a general and a vital benefit, and so is consultation (*shūrā*) in governance, but certain rulings of *fiqh* on sale or interest free loan (*qarḍ ḥasan*) may not include the largest number nor the most vital interests of the people. To ascertain the goal and purpose (*maqṣad*) of *sharīʿa* in the validation of a *ḥukm* is thus not always known from the knowledge of the *ḥukm* itself but needs to be verified through an overall knowledge of the *sharīʿa*, rationality, and *ijtihād*.[24]

3 The existing fiqh literature and fatwa collections on the renowned scale of five values (obligatory, recommended, reprehensible, permissible, and forbidden) could also help in the relative appraisal of *maqāṣid*. Additional information of interest can also be found in the literature relating to the pillars and essentials of Islam (*arkān al-khamsa*), or even the *fiqh* classification of transgressions into the major and minor sins (*al-kabā'ir wa'l-ṣaghā'ir*).

4 Another way of evaluating the applied aspect of *maqāṣid*, as already noted, is by reference to punishments by which the *sharīʿa* may vindicate a certain value and purpose. The prescribed penalties of *ḥudūd* have, in fact, been used by the early writers on *maqāṣid*. But even among the *ḥudūd* offences, there are some, such as slanderous accusation (*qadhf*) and wine drinking (*shurb*) that carry lesser punishments. This would suggest that the values protected by them belong to the second order of *maqāṣid* (i.e. *ḥājiyyāt*).[25]

5 *Sharīʿa* rulings (*aḥkām*) can also be evaluated and the *maqāṣid* they pursue identified by reference to the strength or weakness of a promise of reward or a warning (*al-waʿd wa'l-waʿīd*) that the text may contain. For a promise of reward may have an educational value, or if made in an emphatic language may be suggestive of an essential

maqṣad. For example, the Qur'an promises a great reward for being good to one's parents, and there is an equally emphatic warning for those who annoy them. The Qur'an and Sunna are also emphatic on helping the poor. The immediate purpose in both of these may accordingly be evaluated as essential or complementary, under the family and religion, respectively. Compare these with the promise of reward for one who provides food for animals and birds. The *maqṣad* in the former is to protect the family, an essential *maqṣad*, and compassion to animals in the latter, which may fall under *taḥsīniyyāt*.

Compassion to animals tends to acquire a higher profile in some hadith texts, one of which warns of a severe punishment for a woman who had starved her cat by tying her to a pole until she died, or a promise of great reward (of entry to paradise) for a man who had saved the life of a dog that was dying of thirst in the desert. There are also hadith texts that promise a great reward for apparently small acts of merit, such as recital of a certain verse at a certain time, or for so many times. The goal and purpose that such promises pursue are often detectable from the context. Yet the weight attached to such acts is often symbolic, not necessarily focusing on the acts in question but the principles and purposes they visualize, such as mercy and compassion, or the remembrance of God. The expressions may also be educational or else intended to make an impact on the audience.[26]

It is further understood from the foregoing that a goal and purpose of a lower order can take an unusually higher profile in stressful and life-threatening situations, in which case, one would need to ascertain the immediacy of the *maqṣad* in question within its surrounding circumstances, and say, for instance, in the matter of saving the life of a dying animal, that a *taḥsīnī* objective is elevated to the rank of *ḍarūrī*. This does not change our basic position, however, that clemency to animals generally falls under the category of *taḥsīniyyāt*.

6 The value of a **ḥukm** and the goal pursued by it can also be ascertained by reference to repetition in the Qur'an and hadith. References to justice, for example, compassion and tolerance/patience (**ṣabr**), are abundant in the text. The same can be said of charity beyond the obligatory **zakāt** which occurs frequently in the Qur'an and

hadith. One may add here the proviso, however, that repetition in the sphere of obligatory duties (**wājib** and **ḥarām**) is relatively less important but tends to play a greater role with reference to **mandūb** and **makrūh** (recommended and reprehensible). For when a **wājib** or a **ḥarām** is conveyed in a clear text, further repetition may not necessarily add anything to it (although the Hanafis do take notice of repetition, side by side with textual clarity—thus they raise the **wājib** into an emphatic duty or **farḍ** and the **makrūh** to the level of **makrūh taḥrīmī** as opposed to **makrūh tanzīhī,** which is closer to the permissible or **mubāh**).[27] Repetition thus tends to play a more important role with regard to ethics than it does with regard to clear legal injunctions.

Ijtihād Maqāṣidī

Ijtihād maqāṣidī is a relatively new phrase, mainly occurring in the works of twentieth-century scholars, including al-Raysuni, ʿAtiyah, Selim el-Awa, and Mahdi Shamsuddin, who recommend a certain expansion of the *uṣūli ijtihād* to embrace the wider arena of *ijtihād maqāṣidī* (also *ijtihād maṣlaḥī*). In this effort, the scholar/*mujtahid* develops new rulings based on his understanding of *maṣlaḥa* and *maqāṣid*, provided that he/she is knowledgeable of the sharīʿa. When *ijtihād maqāṣidī* is recognised as a valid form of *ijtihād*, it will, to a large extent, subsume the argument for the independence of the *maqāṣid* as a proof of *sharīʿa* separately from the *uṣūl al-fiqh*.

With reference to the protection of intellect (*ḥifẓ al-ʿaql*), for instance, which is an essential *sharīʿa* purpose, one may include the introduction of modern sciences into the educational programmes of the Islamic institutions of learning, as well as the use of new methods of enquiry that promote the faculty of intellect. This would mean actualization of *ḥifẓ al-ʿaql* in a novel way rather than sticking to the hallowed example of the prohibition of wine-drinking given as a means of the protection of intellect.[28]

Shamsuddin has also stressed in this connection the importance of inference (*istinbāṭ*): The Qur'an and Sunna are its most important

sources, but the modalities of inference have been overly restricted by *uṣūlī* stipulations, which need to be revised and made more receptive to the influence of new developments in education and science. A wider understanding of *istinbāṭ* is therefore recommended. Two areas of interest highlighted are the fiqhi legal maxims, which can be a rich resource for *maqāṣid*-based *ijtihād*.[29] The other and even more important area is the general principles of the Qur'an, such as justice, being good to others (*iḥsān*), and human dignity and equality, which have largely been sidelined through the *uṣūlī* restrictions on rules of interpretation, or through stipulations attached to the application of *istiḥsān*, *istiṣlāḥ*, and *qiyās*.[30]

With reference to *qiyās*, al-Raysuni, al-Turabi (d. 2016) and Shamsuddin have looked into the prospects of how a more flexible reading of *qiyās* can be used to connect *qiyās* with the *maqāṣid*. The prohibition of liquor drinking in the Qur'an (Q. 5:90), for instance, has been rather narrowly constructed in traditional *uṣūl al-fiqh* manuals. A combined reading of the *uṣūl al-fiqh* and *maqāṣid* can, on the other hand, be attempted to extend the rationale of the text to new subjects and areas. One of the *maqāṣid*, namely the protection of intellect, is thus used to prohibit all substances that compromise the intellectual faculty of a person, even if the substance in question is not an intoxicant. Irrational ceremonies and superstitious practices in the name of ancestral legacy, and use of amulets for curing illnesses etc., are also thereby proscribed. Moving further, one may even refer to broader textual dispensations on the elimination of harm and prejudice (*ḍarar*) to arrive at the same conclusions, without necessarily stretching the meaning of the particular text on drinking.

Ijtihād Maqāṣidi: Case Studies

Instances of *maqāṣid*-based *ijtihād* that revise older *fiqhi* positions in the light of changed realities are found in some of al-Qaradawi's responses to particular questions that are summarized below. In all of these, a fresh *ijtihādi* ruling has been constructed based on their relevant *maqāṣid*. The purpose has been to derive new rulings that are more appropriate to the modern context, in ways that shows Islam's responsiveness to legitimate modern expectations.[31]

1 *Christmas Greeting*

A PhD student from Germany wrote to al-Qaradawi that he was a practicing Muslim alongside many others. Was it permissible for them to send Christmas greeting cards to their non-Muslim friends and neighbours and also exchange gifts with them: "We receive gifts from them and it is discourteous if we do not respond in a similar fashion."

In his response al-Qaradawi began with quoting the Qur'an where Muslims are permitted to act justly and be good to non-Muslims who have not been aggressive toward them, but prohibited such if the non-Muslim had been aggressive (Q. 60:8-9). Al-Qaradawi added that the prohibition in this verse contemplated the polytheists of Mecca who committed acts of aggression against the Prophet and his Companions. The verse under review advised the believers to be good (*tabarru*) to all non-aggressors, which means something better than a measure-for-measure response. Al-Qaradawi also cited the hadith in which Asma', the daughter of Abu Bakr, came to the Prophet and said that her mother, who was still an associator (*mushrikah*), kept showing her affection. Should she also reciprocate in a like manner?—to which the Prophet responded that she should. The Qur'an also refers to non-Muslims: "And if they greet you, then you greet them with a greeting more courteous or equal" (Q. 4:86). In reference to Ibn Taymiyyah's restrictive views on this, al-Qaradawi commented: "Had Ibn Taymiyyah lived in our time" and saw how the world has shrunk and Muslims are in constant interaction with non-Muslims, he might have revised his views. Al-Qaradawi also mentioned that many Christians themselves celebrated Christmas as a social occasion rather than a particularly religious one.

What is seen here is a direct recourse to the Qur'an, especially to the *maqṣad* of fairness and good relations with peaceful non-Muslims. The means (*wasilah*) at issue was exchange of Christmas cards and gifts. Al-Qaradawi offered a fresh interpretation that delivered the desired response and purpose.

2 *Inheritance*

A Muslim convert asked al-Qaradawi whether a Muslim may inherit from a non-Muslim, adding that he was a British Christian and embraced Islam ten years earlier. His mother died and left a little inheritance which he refused to take based on the ruling that Muslims and non-Muslims may not inherit one another. Now his father also died and left a big estate behind and he was the sole heir. British law entitled him to all of it. Should he refuse it and leave it to non-Muslims while he was in need of it himself and could spend it on his Muslim family and other Islamic welfare objectives?

Al-Qaradawi responded that the majority position on this was based on the hadith that Muslims and non-Muslims do not inherit one another. This has also been the practice of Companions and upheld by the leading schools of Islamic law. Some of the leading Companions, including ʻUmar al-Khattab, Mu'adh b. Jabal and Mu'awiyah b. Abu Sufyan, however, entitled the Muslims to inherit from non-Muslims but not vice versa. Al-Qaradawi wrote that he also preferred this latter position, even if the majority have not supported it, just as he also preferred the Hanafi interpretation of the hadith wherein *kāfir* is understood to mean a *kāfir ḥarbī* (a non-Muslim who is at war with Muslims, not all non-Muslims). He further added that the criterion of inheritance was material assistance (*al-naṣrah*) and not unity in faith. This is why a *dhimmī* does not inherit a *ḥarbī*, even if they were of the same religion. To entitle a Muslim to inherit from his non-Muslim relative will also help prospective converts not to turn away from Islam for reasons only of losing their inheritance rights.[32]

In this ruling, assistance is the purpose; the means (*wasilah*) is inheritance of a Muslim from a non-Muslim relative, and the *ḥukm* (ruling) so issued begets that purpose.

3 *Organ donation*

Is it permissible to graft a part of the human body onto that of another who is in dire need of it, with the donor's consent?

Al-Qaradawi's response: There are two views on this, one prohibitive and the other permissive. The former maintains that a

Muslim does not have the right to destroy or mutilate a part of his own body (cf., Q. 2:195), and the renowned hadith: "all that belongs to a Muslim is prohibited to another Muslim, his blood, his property and his honour." This is unlike personal property whose owner is entitled to give, sell, or donate as he wishes. The permissive view maintains, however, that the criterion here is the greater benefit that may accrue the proposed donation, especially when the harm is minor or negligible to the donor but which may well save the recipient's life. Modern medicine has also changed the conditions of earlier times whereby grafting of a body part could be fatal to the donor. This is not necessarily the case now. Hence the prohibition collapses when the fear of fatality is no longer present.[33] Al-Qaradawi concluded: "we concur with the permissive position provided that the surgical operation is carried by qualified and skilled physicians as there is greater benefit and saving of human life therein."[34]

In this *maqāṣid*-based *ijtihād*, the purpose is saving life, and transfer of a body part through surgical mutilation is the means. The affirmative ruling or fatwa so issued actualizes the purpose in question.

Conclusion

Many of the *uṣūl al-fiqh* doctrines, such as general consensus (*ijmaʿ*), analogical reasoning (*qiyās*) and even ijtihād have in course of time become burdened with difficult conditions. By comparison to *uṣūl al-fiqh*, the *maqāṣid* are not burdened with methodological technicality and literalist readings of the text. As such the *maqāṣid* integrate a degree of versatility and comprehension into the reading of the sharīʿa that is, in many ways, meet the people's needs without the need to negotiate complex methodologies. Methodological accuracy is, however, needed even in the use of *maqāṣid* as careless referencing to *maqāṣid* has also become problematic due to the outburst of interest in the utilization of *maqāṣid* in recent decades. The *maqāṣid* are not as well-endowed in methodological resources as the *uṣūl al-fiqh* are. So each have their strengths and weaknesses, and a careful researcher can utilise both, if need be, and each in their best capacities.

We now propose the following by way of actionable recommendations:

- A purpose-oriented approach is important for a better understanding of the sharīʿa simply because new issues keep arising with the rapid advancement of science and civilisation. With regard to contemporary human rights, for instance, many questions have arisen that require fresh responses, and they relate closely to the *maqāṣid*.
- Twentieth century Islamic scholarship has enhanced the hitherto-underdeveloped methodology of the *maqāṣid*. It may be justified to say as a result that a ruling of *ijtihād* can be founded on *maqāṣid* by a duly qualified scholar who is knowledgeable both of the *maqāṣid* and *uṣūl al-fiqh*.
- Scholars and writers, universities and the media should make an effort to enhance accuracy in the uses of *maqāṣid*. Further improvement in the methodology of *maqāṣid* will also serve as a check on arbitrariness in the application of *maqāṣid*.
- Muslim countries and jurisdictions should recognise and encourage the *maqāṣid* as a valid basis of legislation and ijtihād, side by side with the *uṣūl al-fiqh* and other disciplines. For the *maqāṣid* have yet to find their way into the working modalities of Muslim legislative assemblies and parliaments.
- The use of questionable means for the procurement of *maqāṣid* have become frequent and often misleading. Due care is therefore called for to avoid distortion in the pursuit and enforcement of alleged but unproven *maqāṣid*.
- Generalization should be avoided. Every country and jurisdiction should be able to find its own bearings with the *maqāṣid*. The macro and micro aspects of *maqāṣid*-based decision making should also be adequately informed by, and coordinated with, one another.

Endnotes

1 Cf. Ahmad al-Raysuni, *Naẓariyyat al-Maqāṣid ʿind al-Imām al-Shātibi* (Rabat: Matbaʿat al-Najah al-Jadidah, 1411/1991), 149.

2 Abu Hamid Muhammad al-Ghazali, *al-Mustaṣfā min ʿIlm al-Uṣūl* (Cairo: al-Maktabah al-Tijariyyah, 1356/1937), 1:287.

3 Yusuf al-Qaradawi, *al-Madkhal li Dirāsāt al-Sharīʿah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1411/1990), 73.

4 ʿIzz al-Din ʿAbd al-Salam al-Sulami, *Qawāʿid al-Aḥkām fi Maṣāliḥ al-Anām*, ed. Taha ʿAbd al-Raʾuf Saʿd (Cairo: al-Matbaʿah al-Husayniyyah, 1351 AH), 1:8.

5 Cf., Mazin Muwaffaq Hashim, *Maqāṣid al-Sharīʿah: Madkhal ʿUmrānī* (Herndon: International Institute of Islamic Thought, 2014/1435), 91.

6 Cf., Hasan Jabir, *al-Maqāṣid al-Kulliyyah fi ḍawʾ Qirāʾah al-Manẓūmiyyah liʾl-Qurʾān al-Karīm* (Beirut: Dar al-Hiwar, 2011), 107; Hashim, *Maqāṣid: Madkhal ʿUmrani*, 108-109.

7 Ahmad al-Raysuni, *Muḥādarāt fi Maqāṣid*, 272.

8 Al-Qarafi observed that "the foundations of sharīʿah are of two types, one is the *uṣūl al-fiqh* and the other the legal maxims of *fiqh*, which are numerous and enormously helpful in ascertaining the wisdom and underlying meanings (*asrār al-sharʿ wa ḥikamuh*) of sharīʿah" (*al-Furuq*, 1-2:3). As an explanatory note, it may be said that at that time, legal maxims were an integral part of the *maqāṣid* but have since been recognized to belong mainly to *fiqh*. Ibn Taymiyyah observed that in addition to the rulings (*aḥkām*) of *sharīʿah* that are evidently important, the wisdom and meanings (*al-ḥikam waʾl-maʿānī*) on which they are founded is the most noble of all *sharīʿah* sciences (*min ashraf al-ʿulūm*). Ibn Qayyim pointed at the textual injunctions of *sharīʿah*, which are inclusive of comprehensive purposes; and one who masters them would not need to rely on speculative evidence, opinion, and analogy (Ibn Taymiyyah and Ibn Qayyim as quoted in Jamal al-Din Atiyah, *Naḥw tafʾil maqāṣid al-sharīʿah*, 235).

9 al-Shatibi, *Manhajiyyatu Maqāṣid*, 87.

10 Cf. al-Qaradawi, *al-Madkhal*, 70-71.

11 al-Nasaʾi, *Sunan*, Manāsik, Wujūb al-Ḥajj.

12 Cf., al-Shatibi, *Muwafaqat*, IV,179.

13 Abu Ishaq Ibrahim al-Shatibi, *al-Muwāfaqāt fi uṣūl al-shariʿah*, ed. Shaykh ʿAbd Allah Diraz (Cairo: al-Maktabah al-Tijariyyah al-Kubra, n.d.), 2:393.

14 Ibid., 3:394.

15 Ibid., 2:6; see also Ibn Qayyim al-Jawziyyah, *Iʿlam al-muwaqqiʿīn ʿan rabb al-ʿālamīn*, ed. Muhammad Munir al-Dimashqi (Cairo: Idarat al-Tibaʿah al-Muniriyyah, n.d.), vol. 1; Qaradawi, *Madkhal*, 58.

16 al-Shatibi, *Muwāfaqāt*, 1:243; Qaradawi, *Madkhal*, 64-65.

17 al-Shatbi, *Muwāfaqāt,* 2:49-51; *idem, al-Iʿtisām* (Mecca: al-Maktabah al-Tijariyyah, n.d.), 2:131-35.

18 al-Shatibi, *Muwāfaqāt,* 3:148.

19 Ibn ʿAshur, *Maqāṣid*, 63; al-Qahtani, *Understanding Maqāṣid al-Shariʿa*, 120.

20 Taqi al-Din ibn Taymiyyah, *Majmuʿ Fatāwā Shaykh al-Islam Ibn Taymiyyah,* compiled by ʿAbd al-Rahman ibn Qasim (Beirut: Mu'assasat al-Risalah, 1398 AH), 32:134.

21 Cf., al-Raysuni, *Naẓariyyat al-maqāṣid*, 44.

22 Qaradawi, *Madkhal*, 75.

23 Ibn ʿAshur, *Maqāṣid al-Sharīʿah*, 331.

24 Cf. ʿAbd al-Hamid al-Najjar, "Tafʿīl al-Maqāṣid al-Shariʿah fi Muʿallajāt al-Qadāyā al-Muʿāsirah li'l-Ummah," in Int'l Islamic University Malaysia Conference Proceedings, Kuala Lumpur, 2006, vol. 1: Maqāṣid al-Shariʿah.

25 Cf. M.H. Kamali, *Punishment in Islamic Law: An Enquiry Into the Hudud Bill of Kelantan* (University of Michigan Press, 2006), 41-42.

26 Cf. al-Najjar, "*Taf'il Maqāṣid*," 26-27.

27 See for details, Kamali, *Principles of Islamic Jurisprudence*, rev. ed. (Cambridge: Islamic Texts Society, 2005), chapter on *hukm sharʿī.*

28 al-Raysuni, *al-Fikr al-Maqāṣidi*, 96, also cited in ʿAtiyah, *Nahwa Tafʿīl*, 191.

29 Legal maxims such as "Harm must be eliminated," "Necessity makes the unlawful lawful," "Necessity is to be measured according to its [true] proportions," and "credibility is attached to purposes and meanings, not to words and forms," can enrich the contemporary expositions of human rights from an Islamic perspective. Atiyah, *Nahwa Taf'il*, 190-191 has discussed Mahdi Shamuddin's views in some detail. See also al-Khadimi, *Fuṣūl fī-l-Ijtihād*, 55.

30 Cf., ʿAtiyah, *Naḥwa Tafʿil Maqāṣid*, 189-91. See also al-Khadimi, *Fuṣūl fī-l-Ijtihād*, 152.

31 Yusuf al-Qaradawi, *Dirāsah fi Fiqh Maqāṣid al-Sharīʿah: Bayn al-Maqāṣid al-Kulliyyah wa al-Nuṣūṣ al-Juzʿiyyah* (Cairo: Dar al-Shurouq, 2008), 269-276.

32 al-Qaradawi, *Dirāsah fi Fiqh al Maqāṣid*, 280-281.

33 This also illustrates the maxim that "the *aḥkām* of sharīʿa are founded on their effective causes and collapse when the effective cause is no longer obtained." Fear of fatality is the effective cause in this case.

34 al-Qaradawi, *Dirāsah*, 229-232.

From Islamic Modernism to Theorizing Authoritarianism: Bin Bayyah and the Politicization of the *Maqāṣid* Discourse

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Abstract

Since the beginning of the twentieth century, modernist Islamic reformers have proposed more "objectives of Islamic law" or *maqāṣid al-sharīʿah* and argued that the *maqāṣid*-oriented approach indicates that Islamic priorities include the modern principles of democracy, social justice, human rights, and government accountability. This paper considers the evolution of *maqāṣid* and its relationship with the traditional framework of *uṣūl al-fiqh*. Subsequently, it addresses how the new *maqāṣid* discourse has been politicized. It analyzes the use of *maqāṣid* by Shaykh ʿAbdullah Bin Bayyah in his recent declarations

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concerning the UAE's policies against regional democracy. This paper argues that Bin Bayyah's interpretation of *maṣlaḥah* (legal benefit) and his adoption of the idea of absolute obedience to the ruler (*walī al-amr*) are not based on the traditional interpretation of the sacred texts that have been adopted by Salafists and Traditionalists. Rather, it is deeply rooted in the *maqāṣid* discourse and rational reasoning related to Islamic modernism. The article includes a comprehensive examination of Bin Bayyah's justifications, as based on two basic points: first, the priority of peace as a higher objective (*maqṣid*) of *sharīʿah* than rights and justice; second, the verification of the *ratio legis* (*taḥqīq al-manāṭ*). This paper argues that this ideological interpretation could shift the purpose-oriented basis of *maqāṣid al-sharīʿah* to result-oriented objectives, which focus on specific ideologies to satisfy contradicting political ends.

Introduction

A widely-used term in the field of Islamic law is *maqāṣid al-sharīʿah*. It was initially used with reference to the betterment (*maṣālih*) of mankind, under the guidelines of the classical Islamic legal heritage that was expounded by al-Ghazālī.[1] However, by the beginning of the twentieth century, a new trend developed with regards to the adoption of the *maqāṣid*-oriented approach. This was related to the increase in the number of *maqāṣid* and promotion of alternative interpretations, as both religious scholars and modernists viewed these interpretations as the ideal approach for adapting *sharīʿah* to the modern context.

Though the modern scholars of *maqāṣid* have distinct perspectives, it can be argued that most of them have similar ideas, such as the suggestion to expand the scope of the *maqāṣid* beyond the five Ghazālian objectives of *sharīʿah* by highlighting 'public interest' and 'well-being' and rejecting the literal readings of sacred texts. They also propose that the application of *maqāṣid* should be expanded beyond the boundaries of Islamic law, and developed in line with new religious rulings that are consistent with the modern context.[2] This raises the question

of whether the *maqāṣid*-oriented approach is serving its purpose. This paper, therefore, evaluates the traditional approach of *maqāṣid* against how it has been utilised since the revival of the theory at the beginning of the twentieth century. Subsequently, it analyzes Shaykh ʻAbdullah bin Bayyah's latest fatwās and declarations concerning the UAE's normalized relations with Israel and the UAE's policies against regional democracy. It aims to demonstrate how the new *maqāṣid* discourse has been politicized, modified, and re-structured to promote authoritarianism.

Evolution of *Maqāṣid al-Sharīʻah*

Maqāṣid al-sharīʻah refers to the higher objectives of *sharīʻah,* aimed at promoting public benefit and preventing potential harm.[3] This section focuses on the main contributions and developments of the theory. Interestingly, the studies on *maqāṣid al-sharīʻah* have been based on various phases of development. They are either traditional, which is roughly between the eleventh and fifteenth century, or from the late nineteenth century onwards. However, the twentieth century was a period when there was an intensive application of the theory of *maqāṣid al-sharīʻah* by modernist Islamic reformers and thinkers, who considered values such as democracy, social justice, good governance, and human rights as 'Islamic' objectives and priorities.[4]

Considering the prevalence of the *maqāṣid*-oriented approach in modern Islamic literature—and with requests for its adoption as a foundational framework to develop new Islamic legal rulings that are consistent with the contemporary context—it is important to examine how such a traditional tool was developed in the contemporary world to meet the demands of its advocates. This could aid with understanding how this same approach could be utilized by different scholars with contradicting decisions and outcomes. Moreover, it is essential to examine the 'pre-*maqāṣid*' era, as well as the contextual background of the formative period with regards to the *uṣūl al-fiqh* (legal theory), since the birth of *maqāṣid al-sharīʻah* cannot be separated from the development of *uṣūl al-fiqh*.

Pre-Maqāṣid Era

The comprehensive history of *maqāṣid al-sharīʿah* can be traced to the early stages of Islam, when various verdicts of the Qurān and prophetic teachings were being revealed. Their objectives and wisdom were generally accepted and understood by the first generation of Muslims, as this historiography narrates.[5] For instance, the second caliph ʿUmar ibn al-Khaṭāb is a notable example of someone issuing verdicts based on the objectives of *sharīʿah*. His administrations and decisions on conquered lands, spoils of war, *ḥudūd* (capital punishment), and the marriage of non-Muslims were sometimes explicitly premised on public interest or *maṣlaḥah*.[6]

Somewhat later, after the era of the Prophet's Companions, when Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820) composed *al-Risālah*, he posited the principles and guidelines that form the broad framework for *sharīʿah*. Al-Shāfiʿī was concerned to justify how Qur'ān, Sunnah, Consensus, and Analogy (*qiyās*) act as the legal bases of the derivations of the rulings. The result was what many have referred to as the "legal theory" of *uṣūl al-fiqh*.[7] Although several academics have debated al-Shāfiʿī's status as progenitor of the science of *uṣūl al-fiqh* and indeed more broadly questioned its beginnings,[8] nonetheless al-Shāfiʿī is often regarded by Muslim sources as its "founder".[9] Al-Shāfiʿī's methodology limited rational reasoning to *qiyās*; however, he argued against the traditional jurists at that time, who rejected the use of reasoning to engage with the scriptures.[10] Ahmed El-Shamsy maintains that jurists' approaches before al-Shāfiʿī often relied on communal traditions, and it was al-Shāfiʿī's model that introduced a scientific interpretative system with the exclusive authority of textual sources and also independent from communal practices. Thus, El-Shamsy concludes that the legal theory, as developed by al-Shāfiʿī and further expanded by his students, was adopted by other jurists and led to the formation of the four recognized legal schools (namely Ḥanafī, Mālikī , Shāfiʿī, and Ḥanbalī).[11]

Like with those of the first Muslim generation, *maqāṣid al-sharīʿah* was embodied and reflected in various legal verdicts made in the four schools of Islamic jurisprudence, but within the limits of *uṣūl al-fiqh*.

Al-Raysūnī argues that the Mālikī school was particularly concerned with promoting human benefits and preventing potential harm and corruption under the name of *istiṣlāḥ*, and sometimes in the name of *qiyās*.[12] Other schools also employed *maṣlaḥah* but under different names, such as the term *istiḥsān* used by the Hanafīs[13] and the term *ikhālah* (convincing opinion) used by the Shāfiʿīs.[14] The Ḥanbalīs, however, at least declaratively emphasized that human reason is unable to achieve moral knowledge independently of the four sources of law. According to this position, good is what God ordered and evil is what he prohibited. Based on this, a *maṣlaḥah* is legitimate only if it is derived from the revealed law.[15] Although Mālikīs were more welcoming to the consideration of *maṣlaḥah* than others, al-Qarāfī (d. 1285) noted that the jurists of all schools made use of it as they all tested rulings' *munāsabah* (suitability), which is in turn the basis of *maṣlaḥah*.[16] Some justified their consideration of *maṣlaḥah* as a tool of attending to legal purposes.[17] However, many scholars directly incorporated it into their methodology as the base of *qiyās*. Such consideration would allow *maṣlaḥah* a tenuous yet notable space in classical legal reasoning.[18] According to Bin Bayyah, the relationship between *maqāṣid al-sharīʿah* and *uṣūl al-fiqh* was seen through several legal approaches that mediated the development of *maqāṣid al-sharīʿah*, such as reasoning by analogy (*qiyās*), juridical preference (*istiḥsān*), and public interest (*maṣlaḥah*).[19] However, *maqāṣid* itself was not considered a separate topic and did not receive special attention until the eleventh century, when scholars developed the most extensive records of the theory's applications.

The Formative Period of the Maqāṣid

According to al-Raysūnī, the Ḥanafi scholar al-Ḥakim al-Tirmidhī (d. probably 298/910) was the foremost jurist to dedicate a full book to *maqāṣid* in his work titled "The Objectives of Prayers," and he was among the earliest jurists to explain the underlining purposes (*al-ʿilal*) of Islamic legal verdicts by using experiential and figurative methods.[20] Similarly, al-Balkhī (d. 322/933) devoted his book *al-Ibānah ʿan ʿilal al-Diyānah* to explaining the purposes underlying Islamic juridical rulings. Later,

more scholars explained the wisdom and purposes of different Islamic legal injunctions, such as al-Qaffāl al-Shāshī (d. 356) in his book *Maḥāsin al-Sharīʿah*, and al-ʿĀmirī (d. 381) in his book *al-Iʿlām bi Manāqib al-Islam*.[21] However, it has been argued that their works do not provide an epistemological and methodological framework for the *maqāṣid* and Islamic legal theory of *uṣūl al-fiqh*. Their significance, rather, lies in the explanation of the virtues and the divine wisdom behind specific rules of Islamic law.[22]

The theory of *maqāṣid* and its applications were more fully manifested by Abū al-Maʿālī al-Juwaynī (d. 478/1085).[23] He is regarded as the architect of the three categories of *maqāṣid al-sharīʿah*, namely necessities, needs, and luxuries,[24] a categorization which was widely adopted and accepted by subsequent jurists.[25] Al-Juwaynī's disciple al-Ghazālī (d. 505/1111) introduced the five higher objectives of *sharīʿah*, namely religion, life, intellect, offspring, and property. These five refer to the essential priorities that should be preserved for the religious and social well-being of individuals, as their absence could result in corrupted and chaotic lives. Based on this, anything that protects these five priorities are considered *maṣlaḥah* (benefit), and whatever does not protect them is its opposite, namely *mafsadah* (harm).[26] The concept of *maṣlaḥah* was discussed extensively by al-Ghazālī and was then integrated into the framework of legal theory (*uṣūl al-fiqh*), as it legitimized new rulings and allowed jurists to address everyday occurrences that are not mentioned in the textual sources of the law.[27] To explain the considerations of *maṣlaḥah*, al-Ghazālī divides it into three types: *maṣlaḥah* that the *sharīʿah* acknowledges and is therefore undoubtedly authoritative; *maṣlaḥah* that is rejected by *sharīʿah* and is consequently plainly inadmissible; and finally, *maṣlaḥah* that is neither acknowledged nor rejected by the *sharīʿah*. Al-Ghazālī was critical of *maṣlaḥah* as an independent source of legislation apart from the Qurān, Sunnah, and Consensus, but he did validate it if it would promote any of the five higher objectives of *sharīʿah*.[28] He also asserted that it must be certain and universal (meaning that it must encompass all Muslims).[29]

These five higher objectives of *sharīʿah* were accepted by almost all subsequent jurists, such as al-Āmidī (d. 631/1233),[30] al-Qarāfī, al-Rāzī (d.

1209), and al-Taftazānī (d. 793/1390).[31] Although a number of scholars continued to contribute to the development of the *maqāṣid*, it is believed that, till the thirteenth century, most of the literature that was written on the discourse of *maqāṣid* after al-Juwaynī and al-Ghazālī were mostly repetitions or explanations of what both scholars had contributed to the theory.[32] This conception was then revised and expanded in the fourteenth century by Ibn Taymiyyah and was developed as a new theory of Islamic law by al-Shāṭibī.[33]

The Iraqi and Ḥanbalī jurist Najm al-dīn al-Ṭūfī (d. 1316) was among the most prominent jurists who challenged the traditional reservations about the authority of *maṣlaḥah*. Al-Ṭūfī witnessed the traumatic impacts of the devastating Mongol invasions that the Muslim world endured during the thirteenth century. He was occupied with the idea of bringing Muslim jurists together, and he found in *maṣlaḥah* a tool that could promote shared ground among jurists, based on their common interests.[34] He argued that since the validity and the importance of the consideration of *maṣlaḥah* were clearly affirmed and derived from the survey and scrutiny of the Qur'ān and Sunnah,[35] the authority of *maṣlaḥah* as a source of legislation should not be limited to scriptural resources. He concluded that if a divine text or consensus differed regarding *maṣlaḥah*, then they should be understood in light of those considerations, and not the opposite. Consequently, al-Ṭūfī argues that *maṣlaḥah* is stronger than consensus, because some scholars have questioned the authority of consensus as a valid source of law, unlike *maṣlaḥah*, which boasts unanimous agreement. Therefore, al-Ṭūfī places *maṣlaḥah* above all other sources of law.[36] Moreover, he asserted that the determination of *maṣlaḥah* relies on the considerations of custom (*'ādah*) and reason (*'aql*). Accordingly, he demanded that Muslim jurists use their reasoning to study the reality of their societies to determine what benefits society and what society itself perceives to be beneficial.[37] Al-Ṭūfī's position regarding the determination of *maṣlaḥah* thus departed from al-Shāfi'ī's theory of *uṣūl al-fiqh* and al-Ghazālī's criteria of *maqāṣid*, such as the compatibility with scriptural text and a direct connection to the five higher objectives of *sharī'ah*.

Al-Ṭūfī's position was based on the famous ḥadīth and legal maxim, "There should be neither harming (*ḍarar*) nor reciprocating harm (*ḍirār*)."

Given this essential principle, he argued that *maṣlaḥah* (not the scriptural resources) must be the basis for the legitimacy of all Islamic legal verdicts.[38] Although al-Ṭūfī's theory of *maṣlaḥah* received a lot of criticism from scholars of his time, it came to enjoy a new prominence among modern scholars and reformers at the beginning of the twentieth century. His treatise on *maṣlaḥah* was published by Rashīd Riḍā in *al-Manār* in 1906, with the annotations of the Syrian reformer Jamāl al-dīn al-Qāsimī (d. 1332/1914), who played a great role in popularizing al-Ṭūfī's discourse.[39] (We will return to modern contestations of this argument.)

The fourteenth century, however, was a time of relative peace and political stability in the Muslim world, which facilitated intellectual production. The Andalusian Mālikī jurist Abū Isḥāq al-Shāṭibī (d. 790/1388) resumed the development of the theory of *maqāṣid*. He markedly improved the notion of *maṣlaḥah*, establishing it as a methodology for overcoming the rigidity instructed by literalism and *qiyās*.[40] Al-Shāṭibī advocates that "The *sharīʿah* was put up for the promotion of the *maṣāliḥ* of the believers."[41] However, as ʿAbdallah Darāz, the commentator on al-Shāṭibī's book *al-Muwāfaqāt*, states, al-Shāṭibī reconstructed three major elements of the theory of *maqāṣid*. First, he treated *maqāṣid al-sharīʿah* as a visibly recognized legal entity. Second, he considered human objectives as another perspective of the whole theory. Third, he established methods and guidelines for identifying and considering the *maṣlaḥah*.[42] Al-Shāṭibī recognized the significance of the concept of *maqāṣid* and was sought to reconstruct the body of *uṣūl al-fiqh* to fit it, which became the unifying theme of problems and subjects that were discussed independently of each other. With his suggestions, *maqāṣid* became the axis of *uṣūl al-fiqh*. The objectives of the *sharīʿah* were now to be extracted from the texts through a process of induction, not by deduction.[43] The inductive reasoning proposed by al-Shāṭibī is significant for its opposition to the classical deductive method associated with al-Shāfiʿī's theory, which had come to prevail in most of Islamic legal reasoning. However, it is important to maintain that al-Shāṭibī's affirmation of inductive methods to explore the *maṣlaḥah* did not mean that he advocates a freewheeling exercise of human reason. Al-Shāṭibī strictly asserts that he does not call for abstract reasoning on morality

or utility and that human reason cannot determine what is *maṣlaḥah* independently of divine texts.[44]

Modernist Approaches to the Maqāṣid: New Priorities and Reinterpretation

Toward the end of the 13th/19th century, the theory of *maqāṣid* emerged again as a central topic within different forums and dialogues of Islamic modernism. Muslim modernists and reformers were concerned about how the approach of expounding and implementing Islamic law did not match the major changes within Muslim societies. They called for a rethinking of the legality and compatibility of the traditional framework of the four sources of the law (the Qurān, the Sunna, Consensus, and Analogy) and, therefore, shifted toward *maṣlaḥah* and the purposes of the divine law as a basis for law-finding. Juridical opinions turned away from looking for the *maṣlaḥah* of individuals and, instead, explored its relevance to wider areas of law and public policies.[45] It is important to note that such calls for reforming the methodological resources of Islamic law were expressed during a period of great social, political, and economic turmoil in the Muslim world.[46] Ottoman jurists began conversations rethinking long-established methods of legislation, in order to promote modernization against the downfall of the Ottoman Empire.[47] These conversations continued among reformists in Egypt, Morocco, Tunisia, and Syria. Similarly, various Muslim governments proposed reform initiatives that resulted in major transformations in areas of education as well as the economic and legal codes that were initially heavily dependent on Western models. Such transformations resulted in the revival of the classical doctrine of *maqāṣid*.[48]

During his visit to Tunisia, Muḥammad ʿAbduh (1849-1905) came across the work of al-Shāṭibī and encouraged his students to benefit from his theory in their struggle for reform. Al-Shāṭibī's seminal treatise *al-Muwāfaqāt* was then published and edited by ʿAbduh's student ʿAbdullah Drāz (1894-1959), and subsequently became a major source for the modern Islamic debate on the maqāṣid. Tunisian modernist scholar Muḥammad al-Ṭāhir Ibn ʿĀshūr (1886–1970) and the Moroccan Muḥammad ʿAllāl al-Fāsī (1910–1974), perhaps under the influence

of ʿAbduh and his student Rashīd Riḍā (1865–1935), took this project further.[49] It has been argued that reformers like al-Qāsimī, al-Fāsī, and Rashīd Riḍā played a vital role in popularizing the discourse of *maṣlaḥah* through the emerging printing press, not only by reproducing and reintroducing al-Ṭūfī and al-Shāṭibī's work, but also by empowering a new generation of reformers and scholars to engage with the traditional discourse of *maqāṣid* and improve it for social change.[50]

Ibn ʿĀshūr proposed for *maqāṣid* to be independent of *uṣūl al-fiqh* in a new scientific discipline. Asserting that Islamic legal theory is inadequate and generally revolves around the technicalities of the law-finding process, Ibn ʿĀshūr argued that the classical legal theory failed to attain or serve the purpose of the *sharīʿah*. He, therefore, rejected the idea that the rules of *uṣūl al-fiqh* are certain (*qaṭʿiyyah*) and explained his worries about the differences in opinions between the jurists.[51] By adopting a *maqāṣid*-oriented approach, Ibn ʿĀshūr sought to define the certain objectives of the *sharīʿah*, against which the validity of Islamic legal rules can be weighed. Therefore, Ibn ʿĀshūr added new objectives and priorities of law to the theory of *maqāṣid*, such as moderation, freedom of thought, maintenance of order, freedom, and equality.[52] While Ibn ʿĀshūr's major motive for *maqāṣid* was to expand the scope of the objectives of *sharīʿah* so that it covered all areas of positive law, particularly financial transactions and the judiciary, other reformers (such as al-Fāsī, who was a political activist and a Muslim scholar) aimed to show secular reformers the progressive nature of Islamic law and to assure Islamic traditionalists of its compatibility in the process of postcolonial state-building. Al-Fāsī's significant addition to the traditional theory of *maqāṣid* was the inclusion of human rights as the essence of the higher objectives of *sharīʿah*.[53]

Rashīd Riḍā also suggested additional higher objectives of *sharīʿah*, including reason, awareness, wisdom, evidence, freedom, self-sufficiency, political and economic reform, and women rights.[54] As previously mentioned, Riḍā was one of the first modern legal reformers who was attracted to al-Ṭūfī's model of *maṣlaḥah*. However, he further departed from the traditions by asserting that the *maqāṣid* approach should be used without any traditional limitations related to *uṣūl al-fiqh*.[55] Riḍā asserted that it is a common misconception that the traditional jurists questioned

the authority of *maṣlaḥah* as a legal source; in fact, in *Tafsīr al-Manār*, Riḍā affirmed that traditional jurists such as al-Shāfiʿī, al-Qarāfī, and al-ʿIzz ibn ʿAbd al-Salām considered principles like "no harming, nor reciprocating harm" (which was al-Ṭūfī's main principle on *maṣlaḥah*) alongside the legal maxim "the harm is to be removed and the benefit is to be preserved" as the main reference to deal with new political, judicial, and military matters. Riḍā wrote that traditional jurists restricted the use of *maṣlaḥah* to the limits of *uṣūl al-fiqh* out of fear that such principles might be abused by oppressive rulers to satisfy their desires or legitimize their autocratic policies in the name of *maṣlaḥah*. Therefore, to limit the scope of ruler's misuse of *maṣlaḥah*, Rashīd Riḍā argued that traditional jurists had opted for deriving all legal rulings directly from the textual resources, closing the door to the potential politicization of *maṣlaḥah*. Yet oppressive rulers never failed to find jurists who would justify their tyranny and legitimize their oppression; therefore, Riḍā argued, the ideal way to prevent such politicization is not in denying the idea of *maṣlaḥah* or limiting it. Rather, one must refer such matters to *ahl al-ḥall wa al-ʿaqd* (those who loosen and bind), which according to Riḍā includes contemporary equivalents to classical jurists among its members. They must act as a binding check on the ruler's use of *maṣlaḥah*.[56]

Many modernist scholars and jurists supported the *maqāṣid*-oriented approach for different aims.[57] They argued that this approach enabled a more genuine and adaptable contribution to contemporary Muslim societies and governments, based on Islamic purposes and goals, and without any restrictive reliance on the Islamic legal methodologies.[58] However, in a critique of the implications of the new approach to *maqāṣid*, Wael Hallaq points out that the adoption of the *maqāṣid*-oriented approach has westernized most Arab societies.[59] Hallaq argues that the modernist discourse of *maqāṣid* is a new development that was not adopted by traditional scholars, including al-Shāṭibī. To him, only al-Ṭūfī might be a possible forerunner to the modernists' discourse. Hallaq further claims that modernists and reformers' understanding is predominantly based on the notions of *maṣlaḥah*, public interest, and necessity. In his opinion, this is a utilitarian approach that runs against the traditional interpretation of Islamic law. He argues that modernists modified and restructured

classical Islamic legal theory to support their approach, making the law nominally Islamic and fundamentally utilitarian.[60]

Likewise, Opwis argues that modernists, who wrote on *maṣlaḥah* from the 1940s until the 1960s, were engaged with the secular legal system and were willing to reshape the traditional body of Islamic law. They adopted al-Shāṭibī's theory of *maqāṣid*, whereby *maṣlaḥah* is utilized as an independent legal indicant. Opwis believes that, if fully applied, this utilization of *maṣlaḥah* could potentially shift the traditional body of Islamic legislation as well as some of its theological doctrines.[61]

Nevertheless, though the *maqāṣid*-oriented approach did not receive much attention from traditional scholars who generally did not support the idea of excluding *uṣūl al-fiqh* from the jurisprudential practice, it was considered by modernists and reformists as a tool that offered jurists the opportunity for more subjectivity and flexibility with the texts. More recently, with the growth in secular legislation in modern nation-states, many contemporary modernist and jurists support the *maqāṣid*-oriented approach for different aims and goals. They argue that this approach allows for a more genuine and adaptable contribution to contemporary Muslim societies and governments based on Islamic purposes, without having to rely on the enormous Islamic legal methodologies, and thus, this aids in evading the literalism and the limitations of *uṣūl al-fiqh* and makes the *sharīʿah* more accessible.[62]

Yūsuf al-Qaraḍāwī (b. 1926), one of the highest-profile *maqāṣidī* scholars, promoted an approach called "Wasaṭiyyah" (moderation), which can be wielded against autocracies and extremist groups alike.[63] He adopted a transnational approach to Islamic law and the Muslim world and utilized media and technologies to spread his thoughts, which also allowed him to engage in issues affecting Muslims in Europe and the Middle East.[64] He also established the European Council for Fatwā and Research and the International Union of Muslim Scholars in recognition of the biases found within government-controlled centres of learning. Like Rashīd Riḍā, al-Qaraḍāwī also proposed extending al-Ghazālī's five-fold classification of the higher objectives that the *sharīʿah* protects. He suggested that the priorities of *sharīʿah* should include social welfare support, human dignity, peace, rights, freedoms, and justice.[65]

Al-Qaraḍāwī argues that the traditional catagorization of *maqāṣid* lacks important objectives related to the protection of human rights and dignity against autocracy and injustice. He writes that traditional jurists considered such crucial objectives to be supplements rather than treating them as the essence of all legal rulings.[66]

Similarly, Muḥammad al-Ghazālī (1917-1996) added justice and freedom to the list of higher objectives. He stressed that justice is the ultimate purpose behind the divine revelation, which requires the law be established to control governments by preventing those in power from encroaching on the liberties and freedoms of citizens.[67] Tāha Jābir al-ʿAlwānī (1935-2016) also added the concept of developing civilization on earth;[68] Kamālī added economic growth, as well as research and development in science and technology.[69] On the other hand, ʿAttia expanded the five higher objectives of *sharīʿah* to twenty-four objectives, which are prioritized across four different realms: the individual, the family, the ummah, and the rest of wider humanity.[70]

Contemporary modernists do not only suggest expanding the scope of the five higher objectives of *sharīʿah*, they also offer new interpretations to al-Ghazālī's five objectives. For instance, Rachid al-Ghannouchi (b. 1941), the leader of Tunisia's Ennahda Islamist politica party, reinterpreted the objective of 'preserving religion' to 'Freedom of faith' and 'Freedom of belief', arguing that the right of religious minorities to exercize their religion and promote it is also to be guaranteed.[71] Al-Qaraḍāwī also reinterpreted the preservation of intellect to regard the right of education and learning, rather than the classical understanding of protecting the mind from all types of intoxications.[72] Likewise, the Egyptian academic Jāsser ʿAuda (b. 1966) proposed that the early concepts such as preservation of religion, life, mind, honour, and money must be reinterpreted into such *maqāṣid* as protecting human rights, freedom of faith, family care, the pursuit of knowledge, and economic development.[73] A more radical approach was introduced by the Swiss intellectual Tariq Ramadan. He argues that juristic adaptation of the *maqāṣid*-oriented approach is also inadequate for providing answers to Muslims' problems in light of the modern contexts and realities. He, therefore, advocates a radical transformation of *sharīʿah* into a framework of ethics rather

than preserving it as a system of legal norms.[74] Ramadan's reform proposal suggests that God revealed twin books, namely the Qurān and the Universe, and that both 'books' equally constitute a source of the higher objectives of *sharīʿah* and applied ethics.[75]

According to David Warren, though Ramadan's theory of the two revelations acknowledges Islamic legal authority in articulating the *maqāṣid al-sharīʿah*, it also promotes a non-juristic trend by giving non-jurist specialists equal authority in formulating new legal opinions.[76] Interestingly, a similar call was proposed by al-Qaraḍāwī, who advocated that non-jurist expertise be involved with jurists in the law-finding process, which he described as "partial *ijtihād*" (*ijtihād juz'ī*).[77] According to Johnston, the modernists' emphasis on the *maqāṣid*-oriented approach, as opposed to the traditional interpretation of the scriptural resources, is likely to promote a non-jurist trend that will lead to the marginalization of the *ʿulamā*. Johnston argues that this trend will only be promoted by access to new media because of the democratization of knowledge.[78] Opwis argues that such a trend is also a result of the modernists' inability to reconcile the epistemology of the classical legal theory with that of the objectives of *sharīʿah*.[79] Like the other modernists, Ramadan also expanded the number of *maqāṣid* to more than forty objectives, among them, the preservation of an individual's dignity, integrity, personal development, health, and inner balance.[80] Moreover, following al-Qaraḍāwī's step, Tariq Ramadan and Jāsser ʿAuda jointly formulated the Research Centre for Islamic Legislation and Ethics (CILE; Markaz Dirāsāt al-Tashrīʿ al-Islāmī wa al-Akhlāq) in Qatar, with the aim of developing a practical spirit that transforms the science of *maqāṣid al-sharīʿah* from theory to practice in all spheres of life. (Ramadan's initiative of setting up a *maqāṣid*-oriented research center for Muslim modernists and reformers based in Qatar was seen by some Western studies as being driven by security policies that aim to gain the approval of the West, who desire a moderate Islamic vision for the Middle East.[81])

Regardless, like the first generation of reformers, the new lists of *maqāṣid* are claimed to be based on a comprehensive reading of the texts and through adopting an integrated overview, rather than relying on the

body of *fiqh* literature in the schools of Islamic law. The reformers assert that *maqāṣid al-sharīʿah* remains vibrant and subject to developments based on the priorities and realities of each era.[82] This methodology has, therefore, shifted the *maqāṣid* discourse and allowed it to overcome the authority of *uṣūl al-fiqh*, while highlighting the higher values and principles of the textual resources. As a result, Islamic rulings will continue to be based on the new and constantly changing lists of higher objectives and priorities.

In the wake of the Arab spring, the *maqāṣid*-oriented approach emerged once again as a trend among Islamic modernist reformers, in response to decades of political repression, poor governance, and autocracy. After decades of ingrained authoritarianism, many reformers, thinkers, and activists asserted democracy, freedom, good governance, human rights, and justice as Islamic objectives and priorities, rather than the application of the classical *sharīʿah* law. Additionally, as opposed to most of their predecessors, the second-generation of *maqāṣid*-oriented reformers like Yūsuf al-Qaraḍāwī, Jāsser ʿAuda, Aḥmad al-Raysūnī (b. 1953), Tariq Ramadan, ʿAbdullah bin Bayyah, Muḥammad Naʾīm, and others encouraged positive relationships with the Western world. Through their *maqāṣid*-oriented approach, they adopt the notions of Islamic democracy, justice, and human rights in their own socio-political orders. They gained broad constituencies, including Muslims and non-Muslims, secularists, and religious individuals, by developing *maqāṣid*-oriented approaches based on these objectives.[83]

Overall, modern scholars of *maqāṣid* have distinct perspectives and it can be argued that most of them share similar ideas. For instance, as detailed above, they expanded the scope of the *maqāṣid* beyond the five Ghazālian objectives of the *sharīʿah* by highlighting 'public interest' and 'well-being' and rejecting literal readings of sacred texts. They also proposed that the application of the objectives of the law should be extended beyond the boundaries of Islamic law, by re-interpreting the law's purpose in light of modernist values, to ensure they remain compatible with modern realities. Some also proposed involving non-jurist experts in the process of law-finding; some utilized media, technologies and institutions to spread their modern *maqāṣid* discourse.

Even so, the use of the *maqāṣid*-oriented approach as a tool for introducing legal change was, and still is, debatable. Technically, the debate is about the constant increase of the objectives and priorities of the law, which differ from one scholar to another. This raises questions, including how these objectives can be prioritized and re-interpreted when conflicts arise between them. Also, to what extent can such re-interpretation and prioritization of *maqāṣid* affect the authority and credibility of this theory, if it turns it into a tool for those with contradictory ideological, social, and political inclinations? In addition, what is the most acceptable methodology to apply the *maqāṣid*-oriented approach in a contemporary era, without being subject to scholars' subjectivity? These broad questions motivated this paper, which address how the new *maqāṣid* discourse has been politicized in light of the recent declarations and fatwās by ʿAbdullah bin Bayyah concerning the UAE's normalized relations with Israel, and the UAE's policies against regional democracy.

The following section examines how ʿAbdullah bin Bayyah's prioritization of *maqāṣid* and interpretation of *maṣlaḥah* were deeply rooted in the Muslim modernists' modes of reasoning. Though the *maqāṣid*-oriented approach has been used by many reformers to articulate various forms of democracy, this paper argues that Bin Bayyah re-purposed this approach to support a modernist authoritarianism.

Bin Bayyah and the Politicization of the *Maqāṣid* Discourse

ʿAbdullah Bin Bayyah (b. 1935) is a prominent Mauritanian *maqāṣidī*, who is a well-recognized politician and jurist in both the Middle East and the West. He has worked with various Arab governments and media organizations that promoted his fatwās as authoritative. Bin Bayyah was previously the deputy head of the Union of Muslim Scholars. He resigned from this post shortly after the Egyptian military coup in 2013, as autocracies in the region bolstered their positions against Arab revolutions.[84] He is the founder of several initiatives, including the 'Muslim Council of Elders' and the 'Forum for Promoting Peace in Muslim Societies', which are funded by the UAE. He is also a member of the Islamic Fiqh Council and the European Council for Fatwā and Research, which is a council of

Muslim jurists who discuss Islamic law to ensure that it is compatible with the lives of Muslims in Europe. Recently, Bin Bayyah was appointed as the chair of the newly established UAE Fatwā Council.[85]

As a background to Bin Bayyah's latest views, it is important to note that his ideas do not exist in the abstract or the realm of pure legal theory. Bin Bayyah's allegiance to and relations with the UAE reflect his political positions and views regarding regional democracy. After the Arab Spring, the UAE has attempted to counter the changes occurring in the region and hinder the ongoing call for democracy. It appears that the UAE believes that such transformations would challenge the country's status quo, and possibly stimulate reformists to oppose its domestic and regional policies. Therefore, the UAE has promoted autocratic political actors to prevent such transformations from occurring. Asides from protecting the country's authoritarianism, the UAE also aspires to be the predominant regional hegemon; therefore, the country promotes Islamic scholars like ʿAbdallah Bin Bayyah for its geopolitical influence.[86]

In theorizing the political and philosophical foundations of his discourse, Bin Bayyah initially explained the challenges and reality of Muslims today in his book *Tanbīh al-Marāji*ʿ *ʿalā Taʾsīl Fiqh al-Wāqi*ʿ. According to Bin Bayyah, the condition of Muslims in the current era is characterized by two extremes. First, a modernist subjective call that seeks to imitate prevailing forms and adopts very flexible rational approaches, whereby the end justifies the means as a necessary pathway for any renaissance project. Second, a traditional and religious call that ignores the modern contextual reality and, thus, does not allow any modern interpretation and implementation of Islamic law addressing modern challenges.[87] According to Bin Bayyah, this bifurcation is a result of the impact of colonialism and the challenges that Muslims encountered after the downfall of the Islamic state at the beginning of the nineteenth century. He also argues that the establishment of the modern nation-state has impacted various aspects of Muslims' lives, including political, financial, educational, and legal domains.

According to Bin Bayyah, the Arab revolutions were motivated by western values that contradict Islamic principles. He opines that Muslim modernists and reformers have confused the values of Western democracy

with those of Islamic models. Bin Bayyah argues that western values of democracy are based on the "Hegelian model", which promotes the idea of "destruction for reconstruction". Based on this assumption, Bin Bayyah concludes that western models of democracy oppose the Islamic principles of promoting public interest *maṣlaḥah* and preventing harm, and then states that the ends do not justify the means.[88] Bin Bayyah also criticizes calls for the revival of the Islamic tradition. He asserts that such projects are impractical efforts to revive an imagined past.[89]

Bin Bayyah defines *maqāṣid* as the spirit of *sharīʿah* that is derived from the fundamental resources of the Lawgiver, as well as those objective purposes attained by intellectual reasoning and interpretations.[90] However, in contrast to modernist reformers, Bin Bayyah believes that *uṣūl al-fiqh* and *maqāṣid* are interconnected and cannot be separated.[91] This paper now examines Bin Bayyah's recent fatwās and declarations, as well as his recent political discourse, and argues that—despite his difference in conclusions—Bin Bayyah's deployment of *maqāṣid* is based on a form of reasoning that is curiously related to the modernist Muslim reformers' discourse.

ʿAbdullah bin Bayyah's politicization of the theory of *maqāṣid* can be accounted for by two legal means. The first is the subjective prioritization of the *maqāṣid* of *sharīʿah* to legitimize and justify autocratic policies. The second is a specious process of verification of the *ratio legis* (*taḥqīq al-manāṭ*). Ḥākim al-Muṭairī, a Kuwaiti academic and a political activist, argues that traditional Muslim scholars adopt a common approach when theorizing authoritarianism, namely, to apply the old jurisprudential themes (crystallized during the the caliphate period of Islamic civilization) to serve as a guideline for legal arguments under the modern state. With such an approach, a ruler is considered identical to the caliph, who must be heard and obeyed. He is also the authority who solely specializes in policymaking, as determined by the old jurisprudence. This approach has long been adopted by Salafist and Traditional authoritarian scholars for decades. These groups always used the literal interpretations of specific texts to provide legitimacy to autocracy.[92] Interestingly, Bin Bayyah adopts a different (*maqāṣidī*) approach to achieve the same purpose (despite his method's modern outlook).

Prioritization of Maqāṣid al-Sharī'ah

According to Bin Bayyah, Muslim modernist reformers and activists are responsible for the political fires that were ignited and the bloodshed which was caused by invoking Islamic traditions to support their demands for democracy. He argues that these groups failed to understand the contextual reality of the modern state. Interestingly, Bin Bayyah argues that modern states vary in their political foundations and the relationship between citizens and the powers that govern them, or between the powers themselves, differ more than the standards of the pre-modern context. Thus, according to Bin Bayyah, "this necessitates a new reality that has new requirements and conditions and demands a different perception to review its purposes and solve its inquiries."[93]

As Jāsser ʿAuda argues, the modern approach of *maqāṣid al-sharīʿah* is focused on the prioritization of legal benefits, which *sharīʿah* recognizes and aims to achieve at various levels.[94] Bin Bayyah's proposal is constructed on this idea of prioritizing the *maqāṣid*. He argues that the *maqṣid* (objective) of peace is more important than the *maqṣid* of justice. In 2014, during his opening speech at the Forum for Promoting Peace in Muslim Societies in Abu Dhabi, and using a *maqāṣid*ic language, Bin Bayyah stated that, "The value of peace has priority over the value of rights. This is not to minimize the importance of justice; rather, it is to say that peace offers the opportunity to attain more rights than those granted by war."[95] This statement illustrates that despite Bin Bayyah's traditional understanding of the theory of *maqāṣid*, he does not reject the modernists' rationale for introducing new objectives. Rather, he modifies and re-purposes their approach. Though he acknowledges the *maṣlaḥah* of preserving human rights and justice, he also contends that this *maṣlaḥah* contradicts the importance of maintaining peace and social stability. Therefore, considering that he believes that the preservation of peace ranks higher than that of democracy and justice, he argues that the *maṣlaḥah* of preventing revolution and opposition against rulers should prevail.

Interestingly, the *maqāṣid*-oriented approach has been developed by many modern reformers to articulate Islamic modernist forms of

democracy and to promote the values of justice and accountability. For instance, according to al-Ghannouchi, freedom and justice are divine duties that people are not allowed to give up or be deprived of. Al-Ghannouchi advocates that such rights are owned by God and human beings are only their trustees; these rights must be preserved according to the will of the owner. Accordingly, for al-Ghannouchi, it is a religious duty to reject autocracy, oppose tyranny, and fight for freedom, justice, and democracy.[96] Surprisingly, Bin Bayyah uses this same approach to support modernist authoritarianism. Bin Bayyah's prioritization of peace over justice aims to establish a modern jurisprudential and legal framework that offers the required legitimacy for countering Arab revolutions and hindering Islamic modernists' demands for democracy and accountability. Furthermore, Bin Bayyah argues that the Islamic framework for good governance is not connected to democracy and, therefore, he considers this an imperfect framework. Applying the concept of *maṣlaḥah*, Bin Bayyah argues that Muslim societies in the Middle East are not yet ready for democracy and "any calls for democracy in such a situation is actually a call of war."[97] His assertions serve as a reminder of the false dilemma (me or chaos) echoed by many authoritarian rulers in the region, from Mubarak in Egypt to Assad in Syria.

This use of *maṣlaḥah* by Bin Bayyah not only directly supports authoritarian politics; it also shows that he perceives Muslim nations to be under a legal emergency status. He makes no suggestions about when it will be possible to restore a state of normality. His statement makes it clear that the vocabulary of avoiding war and remaining in obedience was inherited from the historical rhetoric of the caliphate state. The traditional Salafist discourse used this period (its difference from our ruined present) as a constant reference against revolution. However, Bin Bayyah re-introduces such discourse in the new, modern approach of *maqāṣid al-sharīʿah*. Despite his claims to the contrary, Bin Bayyah does not offer another political approach for the modern political systems that he rejects. Rather, he promotes the long-held principle of classical fiqh, which states that rebellion against a ruler should be prohibited, and there should be 'no opposition against the ruler'.[98] This principle was perceived as the highest Islamic political principle by the Salafists and

the Traditionalists, who determined the citizen-ruler relationship based on literal interpretations of the scriptural resources. On the other hand, modernist scholars of *maqāṣid* distinguish between pacifist rebellion and armed insurrection. They argue that the legitimacy of rebellion is profoundly linked to the motivation behind it and how it occurs. Based on their opinions, an armed and violent rebellion to capture power differs from a defenceless one. They also argue that rulers' legality, and whether they are just or not, also contributes to the legality of the opposition.[99] Regardless of these nuances, Bin Bayyah's interpretation of *maṣlaḥah* expands the prohibition against political opposition to include all kinds of revolutions and rebellions. In his book titled *The Culture of Terrorism*, Bin Bayyah quotes Ibn Qudāmah and other scholars, arguing that if a group of people attempts a rebellion, they should not only be subdued but should also be killed. Bin Bayyah thus holds a startlingly traditional viewpoint about revolts against an established ruler.[100]

Historically, traditional scholars promoted absolute obedience to avoid wars and to prevent competitors from seeking the post of caliph. Gradually, absolute obedience to rulers became a principle of Islamic politics. A good Muslim was then considered one who refrains from causing *fitnah* (rebellion and chaos) in demanding rights like a public *bay'ah* (contract in a form of an oath of allegiance to a leader), or the practice of *shūrā* (consultation) by rulers. A major consequence of this quietist shift is that citizens' roles in the *bay'ah* are marginalized, as it becomes exclusive to a few people to legitimize authoritarian rulers. Accordingly, this transformed the ruler's quality from a *wakīl* (deputy or agent) whom citizens could legally dismiss from their position; to a *wali* (a guardian) who cannot be removed.[101] In this way, it can be argued that the use of the *maqāṣid* approach by Bin Bayyah alters the nature of rulership in the modern Islamic political theory, transforming it from a conditioned legal relationship that could be ended or revoked, to a paternal relationship that is natural and unchangeable. It also shifts the theory's emphasis on the priority of justice, rights, and democracy, to giving priority and legal backing to avoid opposition and maintain authoritarianism.

Although Bin Bayyah's views seem to be that peace can only be attained through authoritarianism, it is important to note that his previous

books and interviews (before the Arab Spring) suggest an alternative. For instance, in *The Culture of Terrorism* Bin Bayyah regards justice and good advisory governance as significant approaches for seeking a solution to political conflicts. He provides doctrinal evidence that centers on the value of justice and the way that just governance can aid in reducing disturbances. For example, he refers to the fifth rightly-guided Caliph ʿUmar bin ʿAbd al-ʿAzīz, when he wrote to his deputy, after hearing about the revolt of the Kharijaites: "put off the fire of sedition with justice."[102]

Bin Bayyah has acknowledged that injustice is one of the main reasons for injustice and that promoting an environment of justice could aid in stemming any form of chaos. However, most of his views on the importance of justice changed after he became ally with the UAE. He now argues that political values like human rights, justice, and freedoms need to be sacrificed to establish peace. Concurrently, he completely ignores other Islamic traditional principles, such as "speaking truth in the presence of a tyrant ruler" and "commanding good and forbidding evil".

Taḥqīq-al-manāṭ *and Theorizing Authoritarianism*

In 2010, Halim Rane, an Australian academic, conducted a study on the impact of the *maqāṣid*-oriented approach on Islam-West relations. His study showed that the West perceives the *maqāṣid*-oriented approach, which adopts modern universal values and objectives, as an approach that is more recognizable and identifiable than the traditional version of the theory, which offers literal and classical interpretations of *sharīʿah* and Islamic governance. Halim further maintains that the *maqāṣid*-oriented approach enhances positive relations between the Muslim world and the West. He affirms that this is because the higher objectives determined by a *maqāṣid* perspective are often acceptable by everyone, regardless of their beliefs.[103] However, Rane's study suggests that the *maqāṣid*-oriented approach does not necessarily result in a complete adoption of policies that are propitiatory or compatible with the West. Based on his study, the key issue that causes a lot of debate between the contemporary generation of *maqāṣidī* reformers and the West is the Israel-Palestine conflict. This is related to the inculcation and adherence to certain objectives and values,

such as justice, freedom, peace, and independence.[104] Thus it appears that Bin Bayyah is the first contemporary jurist to adopt the modern *maqāṣid* discourse as an approach for legitimizing normalization with Israel and for promoting authoritarian agendas.

Following the announcement of the peace deal between UAE and Israel, Bin Bayyah, in his role as the President of the Emirati Fatwā Council, affirmed that "international relations and treaties are amongst the actions that fall within the policy-making specialisation of the ruler solely."[105] Though this declaration appears to be related to the premodern discourse, whereby only a ruler had the power to make treaties with foreign powers and formulate public policy, the declaration adopts the modern approach of *maqāṣid*. As already mentioned, Bin Bayyah's declaration indicates that he views the modern approach of *maqāṣid* as one which promotes absolute obedience to the ruler under the rubric of the "fiqh of reality".

Interestingly, Bin Bayyah's proposal is based on what is known in the field of *uṣūl al-fiqh* as *taḥqīq al-manāṭ* (verifying the *ratio legis*). From a classical point of view, *taḥqīq al-manāṭ* is considered by scholars of *uṣūl al-fiqh* to be an independent mode of reasoning, which is related to the exercise of verifying the presence of the basis or *ratio* (*'illah* or *manāṭ*) of an established legal ruling or principles of law to apply it on new cases or situations. The basis could be explicitly established from the texts, agreed upon by scholars, or achieved by *ijtihād*.[106] Al-Shāṭibī explains the process of *taḥqīq al-manāṭ* by stating that "reasoning by *taḥqīq al-manāṭ* means that the verdict is ascertained from the authoritative sources; however, verification is required to determine its basis (*maḥal al-ḥukm*). Such as in the verdict when the sharī'ah stated: 'and take for witness two persons from among you, endowed with justice' (Q. 65:2): despite that the meaning of justice is known, jurists are still required to verify the person who acquire such attribute."[107] According to al-Shāṭibī's explanation, the process of *taḥqīq al-manāṭ* could be devided into three stages. First, to identify the legal ruling from the established sources. Second, to examine the basis of the new case to determine if it is relevant to the established ruling. Third, to apply the legal ruling to the facts of the cases to come to a valid legal verdict.

According to Bin Bayyah, *taḥqīq al-manāṭ* requires a deep diagnosis of the *wāqi'* (reality) to understand the legal cause behind the verdict, and subsequently apply it to the current context. Accordingly, Bin Bayyah argues that the concept of *wāqi'* is the appreciation of how the modern context differs from the context wherein Islam was revealed. Therefore, *wāqi'* should be considered as part of the legal verdict. Moreover, Bin Bayyah suggests that there are three major elements of contemporary failures, namely a failure of identifying reality, a failure of identifying the impact of reality on verdicts, and a failure of recognizing the proper methodology to deal with reality.[108]

In his book *Tanbīh al-Marāji'*, Bin Bayyah raises the question of who has the authority of *taḥqīq al-manāṭ*, or the authority to verify the legal cause. To answer this question, Bin Bayyah reinterprets the concept of *ijtihād* (independent human reasoning in *sharīʿah* law) by subdividing it into three groups. The first is *ijtihād* in issues concerning individuals, whereby they are left to decide and exercise their faith, based on the verification of their reality. He illustrates with the example of an ill individual who determines by themselves whether they are too sick to fast during the month of Ramaḍān or not. The second is *ijtihād* regarding newly-emerging issues, such as financial transactions, which are supposed to be referred to specialized committees. The third is *ijtihād* related to the duties of *al-sulṭān al-akbar* (the grand ruler). These include the declaration of war, peace treaties, and governance, which should all be left exclusively to the ruler. Accordingly, it seems that Bin Bayyah is advancing an anti-jurist approach. He argues that, since jurists do not make decisions for the sick individual, they should also not be consulted, in any legal or constitutional way, during the ruler's decision making. This is because, according to Bin Bayyah, jurists do not understand the full reality or the implications of certain decisions, nor do they know a ruler's hidden motivations, which could be difficult to understand.[109]

In contrast, even modernists who adopted *maṣlaḥah* as an independent source of legislation were aware of the traditional skepticism related to the potential politicization and violation of *maṣlaḥah* by those in power. As mentioned earlier, Rashīd Riḍā asserted that the utilization of *maṣlaḥah* is the right of the *Ummah* through the role of people who

loose and bind, and should not be undertaken by the rulers solely. Riḍā argued that this basic principle of governance is the greatest political reform that the Qur'ān affirmed in a time when all nations were ruled by autocratic rulers, and it was the practice of the prophet and the four guided caliphs. However, Riḍā also noted that some traditional jurists made this only a recommendation, without any obligatory status, to satisfy the will of rulers and kings.[110]

Although Bin Bayyah addresses the questions of *why* we need to identify the reality, and *who* has the authority to identify the reality, one of the limitations of his explanation is that it does not address the question of *how* reality should be dealt with. On the other hand, in one of his fatwās, Bin Bayyah asserts that one of the methodological defects that have resulted in significant crises in the Muslim world is the use of texts without paying attention to the spirit and the *maqāṣid* of the law. He further argues that such methodological defect occurs on three different stages. These include the stage of *ta'wīl* (textual interpretation), which addresses the question of 'what' the verdict is on a specific issue, based on the textual interpretation; the stage of *ta'līl* (rational reasoning), which addresses the question of 'why', based on the *maqāṣid al-sharī'ah*; and the stage of *tanzīl* (application), which answers the question of 'how' the verdict should be applied, based on contextual realities.[111] Paradoxically, Bin Bayyah suggests that the ruler has all-inclusive authority with regards to policymaking and deciding on political relations. However, once again, he does not attempt to identify the qualities of such rulers, which qualifies them to deal solely with the three stages of *ijtihād*; nor does he address their legal duties or the process of their appointment. Bin Bayyah's approach, therefore, has failed to verify the *ratio legis* or identify the reality.

Despite the fact that Bin Bayyah's lectures and books highlight the importance of the "fiqh of reality," his arguments overlook the dramatic transformation and changes that have occurred to political structures in the shift from the sultanic state to a modern nation-state, and from an individual's rule to the rule of institutions. Yet, when he defines the modern state, Bin Bayyah adopts Max Weber's theory, which claims that the state has the right to use physical coercion and oppression within a

given territory, with the conditions of transparency and fair use of this right. In what reads as a clear criticism of just such an approach, ʿAbdul Ḥamīd Abū Sulaymān (1936-2021) points out that "when contemporary jurists function in the same manner and possibly repeat the old instructions verbatim, there is a lack of appreciation for the changes that have taken place."[112]

The modern *maqāṣid*-oriented approach was mainly developed by Islamic reformers and modernists, who introduced new branches of fiqh like *fiqh al-aqalliyyāt* (the fiqh of minorities),[113] *fiqh al-wāqiʿ* (the fiqh of reality), and *fiqh al-maʾalāt* (the fiqh of results and consequences).[114] They regarded the modern nation-state and its requirements as a basis of modern Islamic law. Therefore, they argue that a state's legality is determined by the will of the nation, including its jurists, who previously established or had some impact on judicial, economic, and political policies. Thus, they believe that the authority to establish legislation should continue to belong to the nation, rather than the ruler. Therefore, modernists maintain that Islamic legality is established on political systems based on elected representatives.[115] This paper has attempted to examine the process by which Bin Bayyah now uses the same means for contradicting purposes.

Why Maqāṣid?

Even though Bin Bayyah adopts the modernist model of *maqāṣid* and certain elements of the *maṣlaḥah* discourse, his elaboration reflects many of the Quietist Salafists' concerns.[116] One may ask why Bin Bayyah decided to use the modern approach of *maqāṣid* to present such a traditional position. If the effective results of his assertions resemble those of the Quietist Salafists, who promote strict obedience to Muslim rulers and silence on political matters, then one wonders why Bin Bayyah did not simply justify his position using the traditional doctrine that relies on literal interpretations of the texts.

Over the last decade, the Quietist Salafists have loudly proclaimed their loyalty to the figure of the ruler, critical of both western democracy and Muslim modernist reformers. During the Arab Spring in Egypt, Libya, and Syria, they did not support the revolutionary uprisings and

enjoined Muslims to avoid any revolts against their presidents, and even described them as Kharijites.[117] Moreover, the Quietist Salafists have developed solid connections with Saudi Arabia and the Gulf states in general. Many Gulf states have benefited from their discourse in maintaining their power and authority. For example, Saudi Arabia has for several decades used Salafist think-tanks against 'Panarabism' and 'Nasserism' and, subsequently, Iranian Shiite revolutionism.[118] Likewise, in the UAE, the Quietist Salafists were previously given limited support to undermine the Muslim Brotherhood's political activities, which were considered a threat to regional stability.[119] However, after the Arab Spring, they were gradually excluded from the political and social scene, particularly in the UAE. This exclusion was more evident after the conference held in Chechnya in August 2016, which was titled "Who are Sunnis?", and was partially funded by the UAE. It is reported that over two hundred Sunni scholars were invited, but none of them were Salafis. The closing statement during the conference introduced a new definition of the broad Sunni "family," which indirectly criticized the Salafists for being intolerant of other Sunni groups recognized during the conference, such as Ṣūfīs. Hence, the Salafists were excluded from the definition.[120]

Therefore, it can be deduced that regardless of the Quietist Salafists' unconditional support to the ruler and their opposition to any type of rebellion, they appear to have become more defensive and marginalized after the Arab uprisings. A likely explanation is that their doctrine is considered by the UAE as possibly rigid and incapable of adopting a programme of religious moderation, which the UAE is trying to sell to the West.[121] Even so, the UAE appears to seek the appropriation of the Salafists' traditional narrative, which guarantees absolute obedience and forecloses the possibility of political rebellion, while reshaping it in the modern framework of a *maqāṣid*-oriented approach. This then shores up the UAE's juridico-political convictions and advances its political image, which is based on peace and modernism, and promotes its credibility in international relations. In fact, Bin Bayyah's appropriation and politicization of the *maqāṣid*-oriented approach could be the catalyst for a new ideological force to surpass Islamic legal modernism: a modernist authoritarianism that opposes democracy and justice in an Islamic idiom.

Conclusion

This paper has argued that the ideological utilization of the *maqāṣid* discourse has shifted the theory's objective from its purpose-oriented basis to result-oriented and utilitarian reasoning. With the ever-increasing number of *maqāṣid*, the constantly changing priorities, and the absence of appropriate guidelines, the *maqāṣid* approach has become an ambiguous and loose methodology. This has resulted in its misapplication or misuse to achieve different outcomes. Indeed, Bin Bayyah's subjective reinterpretation and prioritization of the *maqāṣid*-oriented approach to satisfy utilitarian objectives could result in a failure to effectively reform legal theory. It could also reduce the opportunity to make it pragmatic and relevant to the values of modern society—which was its stated aim. Even more, it also threatens the legitimacy of the *maṣlaḥah* discourse, which has been used to support autocracy and act against human rights.

Endnotes

1 Muḥammad al-Ghazālī, *al-Mustaṣfā min ʿilm al-uṣūl* (Riyadh: Dār al-Maymān, 2004), 174.

2 ʿAbdil-Ilāh al-Qāsimi, *Madkhal ʿĀm li-Dirāsah al-maqāṣid* (Cairo: Dār al-Kalimah, 2015), 16.

3 Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 59.

4 Jasser ʿAuda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach* (United Kingdom: International Institute of Islamic Thought, 2008), 144.

5 Muḥammad Hāshim Kamālī, *An Introduction to Sharīʿah* (Kuala Lumpur: Ilmiah Publishers, 2006), 130.

6 Aḥmad al-Raysūnī, *Imam al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law* (United Kingdom: Islamic Book Trust, 2006), 38-45.

7 Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, repr. ed. (United Kingdom: Clarendon Press, 1953), 1. Also see Wael Hallaq, *History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 21.

8 See Joseph Lowry, "Does Shafiʿi Have a Theory of 'Four Sources' of Law?" in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 23–50. Lowry considers al-Shāfiʿīʿs *Risālah* as a book that aims "to eliminate the apparent conflicts" between Qur'an and Sunnah. It thus intended to defend the prophetic ḥadith and to develop a coherent vision of the framework of the law. See Joseph Lowry, *Early Islamic Legal Theory: The* Risālah *of Muḥammad Ibn Idrīs al-Shāfiʿī* (Leiden: Brill, 2007), 23, 359; see also, Wael B. Hallaq, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25, no. 4 (1993): 587-605. Hallaq does not consider al-Shāfiʿīʿs *Risālah* a true work in *uṣūl al-fiqh*, and he gives precedence to Ibn Surayj and his disciples by assigning them a primary role in its formation; see also Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 128.

9 Muḥammad ibn Idrīs al-Shāfiʿī, *The Epistle on Legal Theory*, trans. Joseph Lowry (New York: New York University Press, 2013). See also George Makdisi, "The Juridical Theology of Shāfiʿī: Origins and Significance of Uṣūl al-Fiqh," *Studia Islamica* 59 (1984): 8-9.

10 Hallaq, *History of Islamic Legal Theory*, 22.

11 Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 4.

12 Al-Raysūnī, *Imam al-Shāṭibī's Theory of the Higher Objectives*, 38-45.

13 For a definition of *istiḥsān* by a Ḥanafī jurist, see Abū Sahl al-Sarakhsī, *al-Uṣūl*, ed. Abū al-Wafā al-Afghāni (Cairo: Dar al-Ma'rifah, 1973), 199-215.

14 Muḥammad Abū Zahra, *Tārīkh al-madhāhib al-islāmiyyah* (Dār al Fikr al-ʿArabī, 1963), 355.

15 Felicitas Opwis, "*Maṣlaḥa* in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005): 182-223, at 188–189.

16 Shihāb al-Dīn al-Qarāfī, *Sharḥ tanqīḥ al-fuṣūl*, ed. Ṭāhā `Abd al-Ra'ūf Sa`d (Cairo: Dār al-Fikr, 1973), 303, 394, 446.

17 For example, Abū Bakr Aḥmad al-Jaṣṣās's (d. 370 A.H.) treatise *Uṣūl al-Ǧaṣṣās* discussed the importance of attaining *maṣlaḥah* in several contexts, such as when dealing with the issue of *naskh*, abrogation: *al-Fuṣūl fi al-Uṣūl* (Jordan: Turūth For Solutions, 2013).

18 Hallaq, *History of Islamic Legal Theories*, 112–113, 168–174, 214–231, 261; Opwis, *Maṣlaḥa*.

19 ʿAbdallah Bin Bayyah, *ʿAlāqat maqāṣid al-sharīʿah bi-uṣūl al-fiqh* (London: Mu'assasat al-Furqān li al-Turāth al-Islāmī, Markaz Dirasāt Maqāṣid al-Sharīʿah al-Islāmiyyah, 2006), 131-135.

20 Al-Raysūnī, *Imam al-Shāṭibī's Theory of the Higher Objectives*, 5-7.

21 Ibid.., 8. He devotes the sixth chapter of his book to the wisdom and virtue of worship in Islam.

22 Mohamad El-Tahir El-Mesawi, "From al-Shāṭibī's Legal Hermeneutics to Thematic Exegesis," *Intellectual Discourse* 20, no. 2 (2012): 192.

23 Muḥammad Hāshim Kamālī, *Principles of Islamic Jurisprudence* (Kuala Lumpur: Ilmiah Publishers, 2000), 401.

24 Al-Juwaynī, ʿAbdul al-Malik Ibn ʿAbdullah, *al-Burhān fi Uṣūl al-Fiqh* (annotated by ʿAbdul-ʿAdhīm al-Dīb) (Qatar: Wazārat al-Shu'ūn al-Dīniyyah, 1980), 183.

25 Hallaq, *History of Islamic Legal Theories*, 39.

26 Opwis, "Maṣlaḥa."

27 al-Raysūnī, *Imam al-Shāṭibī's Theory of the Higher Objectives*, 63-64.

28 al-Ghazālī, *al-Mustaṣfā*, 413-430.

29 Ibid., 477.

30 al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, ed. Syed al-Jamīlī (Beirut: Dār al-Kutub al-ʿArabiyyah, 1984).

31 El-Mesawi, "From al-Shāṭibī's Legal Hermeneutics to Thematic Exegesis," 194.

32 Aḥmad al-Raysūnī, *al-Baḥth fī Maqāṣid al-Sharīʿah* (London: Al-Furqān Islamic Heritage Foundation, 2005), 20.

33 Ibid., 89.

34 Najm al-dīn, al-Ṭūfī, "Adillat al-sharaʿ wa taqdīm al-maṣlaḥah fī al-l-muʿāmalāt ʿalā al-naṣ," *al-Manār* 9 (1906-7): 763.

35 Ibid.,754-758.

36 Ibid., 753-764.

37 Najm al-dīn al-Ṭūfī, *al-Taʿyīn fī Sharḥ al-Arbaiʿīn* (Egypt: Al Rayān Foundation for Publishing, 1998), 239.

38 Ibid., 237-280.

39 Ahmed El Shamsy, *Rediscovering the Islamic Classics: How Editors and Print Culture Transformed an Intellectual Tradition* (Princeton: Princeton University Press, 2020), 198. Al-Ṭūfī articulated his manifestation in *al-Risālah* with a great detail when he was interpreting ḥadīth 32 of al-Nawawī's (d. 676/1277) forty ḥadīths. Al-Qāsimī (d. 1332/1914) published the *Risālah* in a new version selecting parts of the interpretation which were related to *maṣlaḥah*, including footnotes and three treatises called *Risālah fī al-Maṣlaḥah al-Mursalah*, all under the name of *Majmūʾ Rasāil fī Uṣūl al-Fiqh* in Beirut in 1324/1906. Rashīd Riḍā then published the *Risālah* with al-Qāsimī's annotations in *al-Mānar*, volume 9, no. 10 (1906).

40 Hallaq, *Islamic Legal Theories*, 136.

41 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, with explanations by A. Drāz (Cairo: Dār al-Ḥadīth, 2005), 8.

42 Ibid., 5-6.

43 Ḥammadi al-ʿUbaydi, *Al-Shāṭibī Wa Maqāṣid al-Sharīʿah* (Beirut: Dār Qutaybah, 1996), 173.

44 Al-Shāṭibī, *Al-Muwāfaqāt*, 1:27: "the function of reason is to find out *maṣlaḥah* from the textual resources and to extrapolate its meanings, but human reason cannot independently decide what is *maṣlaḥah* and what is not. Judgements of what is good must be in light of the Islamic Law itself. There is no room for independent human reasoning."

45 Opwis, *Maslaha*, 184.

46 Felicitas Opwis, "New Trends in Islamic Legal Theory: Maqāṣid Al-Sharīʿa as a New Source of Law?" *Die Welt Des Islams* 57, no. 1 (2017): 7-32. See also, M. Masud, *Shāṭibī's Philosophy of Islamic Law* (Kuala Lumpur: Islamic Book Trust, 1995), 86.

47 Wael Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16, no. 1 (1984), 3-41.

48 Opwis, *Maslaha*, 186. See also Halim Rane, "The Impact of *Maqāṣid al-Sharīʿah* on Islamist Political Thought: Implications for Islam–West Relations" (2013), 350.

49 See Drāz's introduction to Muḥammad Isḥāq al-Shāṭibī, *al-Muwāfaqāt*, ed. ʿAbd Allah Drāz (Beirut: Dār al-Maʿārifa, 1996), 1:16.

50 El Shamsy, *Rediscovering the Islamic Classics*, 198; see also Hallaq, *Islamic Legal Theories*, 214–231.

51 Muḥammad al-Ṭāhir Ibn ʿAshur, *Maqāṣid al-Sharīʿah al-islāmiyyah*, 3rd ed. (Tunisia: al-Sharikah al-Tūnisiyyah li'l-Tawzi', 1988), 5-8.

52 Ibid., 95-100 and 130-135.

53 Muḥammad ʿAllāl al-Fāsī, *Maqāṣid al-Sharīʿah al-Islāmiyyah wa Makārimuhā*, ed. Ismāʿīl al-Ḥasanī, 2nd ed. (Cairo, Dār al-Salām, 2013), 348.

54 Muḥammad Rashīd Riḍā, *al-Waḥy al-Muḥammadī: Thubūt al-Nubuwwah bi al-Qur'an wa Daʿwat al-shuʿūb al-Mansiyyah ilā al-Islām: dīn al-insāniyyah wa al-salām*, 3rd ed. (Beirut: Dār al-Manār, 1985), 275-390.

55 Ibid., 221.

56 Muḥammad Rashīd Riḍā, *Tafsīr al-Manār* (Lebanon, Dār al-Maʿrifah), 7:197-198 (commenting on Q. 5:101-2).

57 Such as the Lebanese Subḥi Maḥmaṣānī (d. 1986), the Moroccan ʿAllāl al-Fāsī (d. 1974), and the Sudanese Maḥmud Muḥammad Ṭāha (d. 1985).

58 Kamālī, *An Introduction to Sharīʿah*, 257.

59 Wael Hallaq, "Maqāṣid and The Challenges of Modernity," *al-Ǧāmiʿah* 49, no. 1 (2011): 11.

60 Hallaq, *A History of Islamic Legal Theories*, 224.

61 Opwis, *Maṣlaḥa*, 220-221.

62 Kamālī, *An Introduction to Sharīʿah*, 258.

63 Al-Qaraḍāwī defines *wasaṭiyyah* as "a balance that equilibrates the two opposite ends, in which neither ends stand alone with its supremacy or banish its counterpart; in which nether ends take more than it deserves and dominates its opponent" (*Kalimāt fī al-wasaṭiyyah al-islāmiyyah wa maʿālimihā* (Cairo: Dār al-Shurūq, 2011)).

64 David H. Warren, *Rivals in the Gulf: Yūsuf Al-Qaraḍāwī, ʿAbdullah Bin Bayyah, and the Qatar-UAE Contest Over the Arab Spring and the Gulf Crisis* (N.p.: Taylor & Francis, 2021).

65 Yūsuf al-Qaraḍāwī, *al-Madkhal li dirāsat al-sharīʿah al-islāmiyyah* (Cairo: Maktabat Wahbah, 1990), 75.

66 Al-Qaraḍāwī, *Dirāsah fī fiqh maqāṣid al-sharīʿah: Bayna al-maqāṣid al-kulliyyah wa al-nuṣūṣ al-juzʿiyyah* (Cairo: Dār al-Shurūq, 2006), 27.

67 Gamāl Eldīn ʿAttia, *Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Sharīʿah: A Functional Approach* (London: The International Institute of Islamic Thought, 2007), 116-149; Kamālī, *An Introduction to Sharīʿah*, 98.

68 Ṭahā Alwānī, *Afalā Yatadabbarūna al-Qur'ān* (Cairo: Dār al-Salām, 2010), 62.

69 Kamālī, *An Introduction to Sharīʿah*, 201.

70 ʿAttia, *Towards Realization of the Higher Intents of Islamic Law*, 116-149.

71 Rāchid al-Ghannoūchī, *Al-Ḥurriyāt al-ʿāmmah fī al-dawlah al-islāmiyyah* (Beirut, 1993), 44.

72 al-Qaraḍāwī, *Dirāsah*, 30.

73 ʿAuda, *Maqāṣid al-Sharīʿah as Philosophy of Islamic Law*, 25.

74 Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2004), 54.

75 Ramadan, *Radical Reform*, 89.

76 David Warren, "Doha—The Center of Reformist Islam? Considering Radical Reform in the Qatar Context: Tariq Ramadan and the Research Center for Islamic Legislation and Ethics (CILE)," in *Maqāṣid al-Sharīʿah and Contemporary Reformist Muslim Thought*, ed. Adis Duderija (New York: Palgrave Macmillan, 2014), 85-89.

77 This was part of al-Qaraḍāwī's wider appreciation of the reality of modern issues, which as he argues are too complex for an individual jurist to deal with. Therefore al-Qaraḍāwī advocates collective ijtihād (*ijtihād jamāʿī*), by which the efforts of a team of experts from different fields replace the efforts of individuals. See Yūsuf al-Qaraḍawī, *al-Ijtihād al-Muʿāṣir bayna al-Inḍibāt wa al-Infirāṭ* (Cairo, 1998), 50, 103.

78 David Johnston, "Yūsuf Qaraḍāwī's Purposive Fiqh: Promoting or Demoting the Future Role of the '*ulamā*'?" in *Maqāṣid al-Sharīʿah and Contemporary Reformist Muslim Thought*, 60.

79 Felicitas Opwis, Review of Adis Duderija (ed.), *Maqāṣid al-Sharīʿa and Contemporary Reformist Muslim Thought: An Examination*, in *Islamic Law and Society* 23, no. 1/2 (2016): 141-146.

80 Ramadan, *Radical Reform*, 181.

81 Warren, "Doha: The Center of Reformist Islam?" 89.

82 Kamālī, *An Introduction to Sharīʿah*, 201.

83 Rane, "The Impact of Maqāṣid al-Sharīʿah," 338.

84 Usaama al-Azami, "'Abdullah bin Bayyah and the Arab Revolutions: Counter-revolutionary Neo-traditionalism's Ideological Struggle against Islamism," *The Muslim World* 109 (2019): 343-361.

85 Biography at the Official Website of Shaykh ʿAbdallah Bin Bayyah, http://binbayyah.net/english/bio/.

86 For more on Bin Bayyah's alliance with the UAE, see al-Azami, "'Abdullah bin Bayyah and the Arab Revolutions," which addresses how Bin Bayyah's discourse serves the UAE goal of expelling Islamist activity from the region. On the idea of branding for international security purposes as a driver for the relationships between scholars and regimes, see Warren, *Rivals in the Gulf*.

87 Bin Bayyah, *Tanbīh al-Marāji'*, 9.

88 Ibid., 10.

89 Ibid.

90 ʿAbdullāh Bin Bayyah, *Mashāhid min al-maqāṣid* (Riyadh: Dār Wujūh, 2010), 165.

91 ʿAbdullāh Bin Bayyah, *ʿAlāqat maqāṣid al-sharīʿah bi uṣūl al-fiqh* (Cairo: al-Mu'assasah al-Saūdiyah, 2006), 30.

92 Hākim al-Muṭairī, "al-Ḥurriyyah aw al-Ṭūfān" (Beirut: Arabic Foundation for Studies and Publication, 200). For more about the Caliphate in Islamic political thought, see also Ovamir Anjum, *Politics, Law, and Community in Islamic Thought: The Taymiyyan Moment* (Cambridge: Cambridge University Press, 2012), xiii.

93 Bin Bayyah, *Tanbīh al-Marājiʿ*, 10.

94 Jāsser ʿAuda, *al-Dawlah al-Madaniyyah, Nahwa Tajāwuz al-Istibdād maʿa taḥqīq maqāṣid al-sharīʿah* (Arab Net For Research And Publications, 2015), 17.

95 "A Call to Intensify Peace Efforts," The Official Website of Shaykh ʿAbdallah Bin Bayyah, http://binbayyah.net/english/a-call-to-intensify-peace-efforts/.

96 Al-Ghannoūchī, *al-Ḥurriyyāt*, 51.

97 "Ḥilf-al-Fuḍūl," Bin Bayyah's Speech, Forum for Promoting Peace Conference, December 8, 2018, https://www.youtube.com/watch?v=8dTslRil0UA.

98 Bin Bayyah, *Tanbīh al-Marājiʿ*, 109.

99 Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001), 4.

100 ʿAbdullah Bin Bayyah, *al-Irhāb al-tashkhīs wal-ḥulūl. Mawqif al-Islam min al-ghulu wa al-taṭarruf* (Riyadh, 2012), 37.

101 al-Muṭairī, *al-Ḥurriyyah aw al-Ṭūfān*, 177-178. See also Anjum, *Politics, Law, and Community in Islamic Thought,* xiii. Anjum argues that the quietist attitude towards those in power was and is the predominant strand among the traditional Muslim scholarly elite. He argues that this apolitical and legalistic tendency was not because of jurists' lack of involvement with power, but rather because of the absence of a sustained effort to theorize power and because of a historical process in which Islam became depoliticized.

102 Bin Bayyah, *al-Irhāb al-tashkhīs wal-ḥulūl*, 9.

103 Halim Rane, "Trends in Muslim Political Thought: Redefining Islam in the Socio-Political Context," E-International Relations, April 16, 2010,

https://www.e-ir.info/2010/04/16/trends-in-muslim-political-thought-redefining-islam-in-the-socio-political-context/.

104 Ibid., 6.

105 Wam, "UAE Fatwā Council: International Relations and Treaties are Inclusive Authority of Wali al-amr," August 18, 2020, https://www.wam.ae/ar/details/1395302862326.

106 Aḥmad Ḥasan, *Analogical Reasoning in Islamic Jurisprudence: A Study of the Juridical Principle of Qiyas* (New Delhi: Adam Publishers & Distributors, 2007), 354.

107 Al-Shāṭibī, *al-Muwāfaqāt*, 361-362.

108 Bin Bayyah, *Tanbīh al-Marāji'*, 71.

109 Ibid., 83.

110 Riḍā, *Tafsīr al-Manār*, 7:197-198 (commenting on Q 5:101-102).

111 'Abdallah Bin Bayyah, "Fatwā on The Importance of The Maqāṣid Methodology," The Official Website of Shaykh 'Abdallah Bin Bayyah, http://binbayyah.net/arabic/archives/3841.

112 'Abdul Ḥamīd Abū Sulaymān, *Towards an Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought* (United States: International Institute of Islamic Thought, 1993), 77.

113 See Yūsuf al-Qaraḍāwī, *Fiqh al-Aqalliyyāt al-Muslimah* (Cairo: Dār al-Shurūq, 2001). See also Ṭāhā Jābir Fayyāḍ 'Alwānī, *Towards a Fiqh for Minorities: Some Basic Reflections* (United Kingdom: International Institute of Islamic Thought, 2010). See also Tariq Ramadan, *To Be a European Muslim* (Leicester: The Islamic Foundation, 2000), and many articles by Khaled Abou El Fadl on the fiqh of minorities.

114 For more about "Fiqh al Ma'alat," see al-Qaraḍāwī, *Dirāsah*, 14, 20.

115 Louay Safi, "The Islamic State: A Conceptual Framework," *American Journal of Islamic Social Sciences* 8, no. 3 (1991): 132.

116 Quietest Salafis are more commonly referred to by the quasi-pejorative designation of "al-Jāmiyyah," or the followers of Muḥammad Amān al-Jāmī (d. 1994). They are also referred to as the Madkhaliyyah, referring to al-Jāmī's student Rabī' bin Hādī al-Madkhalī. For more on the different strands of Salafism, see Roel Meijer (ed.), *Global Salafism: Islam's New Religious Movement* (United Kingdom: Oxford University Press, 2013).

117 Hassan Mneimneh, "The Spring of a New Political Salafism?" Current Trends in Islamist Ideology 12 (Hudson Institute, 2011), 33.

118 Alexei Vassiliev, *The History of Saudi Arabia* (London: Saqi Books, 1998), 469.

119 Ḥasan Noorhaidi, "Saudi Expansion, The Salafī Campaign and Arabised Islam in Indonesia," in *Kingdom without Borders: Saudi Political, Religious and Media Frontiers*, ed. Maḍāwī al-Rasheed (London, 2008), 275.

120 Kristin Smith Diwan, "Who Is Sunni?: Chechnya Islamic Conference Opens Window on Intra-Faith Rivalry," The Arab Gulf States Institute in Washington, September 16, 2016, https://agsiw.org/who-is-a-sunni-chechnya-islamic-conference-opens-window-on-intra-faith-rivalry/.

121 Mneimneh, "The Spring of a New Political Salafism?" 32-33.

Before *Maqāṣid*: Uncovering the Vision of Contested Benefits *(maṣāliḥ)* in the Classical Shafi'i School

YOUCEF SOUFI

Abstract

This article provides a sketch of the historical antecedent to the 11th century theory of *maqāṣid al-sharī'a* (the purposes of the law). I examine the role of human benefit (*maṣlaḥa*) within the classical Shafi'i school, focusing on the 10th and 11th centuries. I show that Shafi'i law gave consideration of benefit a central role in the interpretation of scripture. This is attested to in both texts of legal theory (*uṣūl al-fiqh*) and substantive law (*furū'*

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al-fiqh). Importantly, I also explain how Shafiʿis subjected their claims about benefit to contestation and debate, acknowledging the limits to humans' ability to apprehend God's law. In presenting this classical model of benefit in the Shafiʿi school, the essay offers an alternative for reformists who invoke the *maqāṣid al-sharīʿa* today—an alternative that has a deep pedigree within the Islamic tradition and promotes the democratization of debate over the benefits of the law.

Introduction

The importance of *maqāṣid al-sharīʿa* to Islamic reformist thought is significant.[1] For many reformers, the idea that Islamic law serves foundational ends (like the protection of life, property, religion, lineage, and reason) holds the promise of correcting premodern laws by providing a touchstone from which to judge the validity of all legislation. However, invoking *maqāṣid* has two acknowledged limitations. The first is the *maqāṣid*'s peripheral importance to the discourse of substantive law (*furūʿ al-fiqh*).[2] Al-Ghazali (d. 505/1111) articulated the first version of the *maqaṣid al-sharīʿa* in the late 11th/early 12th century, long after classical jurists had produced texts addressing standard substantive legal matters.[3] This peripheral status opens reformists up to a critique of failed faithfulness to the legal tradition. The second limitation is the lack of mechanisms in adjudicating conflicting interpretations about the *maqāṣid*.[4] As a consequence of this lack, the *maqāṣid* theory facilitates an authoritarian resolution to legal interpretation where one reading of the *maqāṣid* is given primacy over another. But what if the reformers are looking for tools in the wrong period of Islamic history? What if the classical period in the two centuries prior to al-Ghazali's formulation of the *maqāṣid* offered them what they needed to rethink the law in ways that do justice to their sensibilities about a merciful God, while overcoming the two critiques I have outlined above?

In this article, I examine the role that human benefit played within the legal thought of the Shafiʿi school in the classical period, particularly the 10th and 11th centuries CE.[5] I purposely focus on the Shafiʿi

school because Shafiʿis have long been considered champions of textual authority over the pragmatic approaches of their predecessors in Iraq and Medina[6]—a view which I seek to complicate. My strategy is to examine texts both of legal theory (*uṣūl al-fiqh*) and substantive law (*furūʿ al-fiqh*). I make three claims. First, I argue that Shafiʿis had a pluralistic view of human benefits which they sought to uncover through engagement with scripture. Second, these human benefits determined how Shafiʿis applied the law. And third, Shafiʿis saw these benefits as objects of ongoing debate. These debates took place through the medium of books and disputations (*munāẓarāt*) between jurists. Thus, the Shafiʿis considered that the identification of human benefit should always be provisional and open to critique. Uncovering what I call the "classical model of contestation" over human benefits within the classical Shafiʿi school provides contemporary reformers with an alternative approach to the *maqāṣid*, one that demands that claims about "benefits" or "objectives" of the law be open to ongoing scrutiny.

To expand upon the classical Shafiʿi understanding of benefit, the article is divided into three sections. The first section examines two texts of *uṣūl al-fiqh* to show the distinction between the Ashʿari-Shafiʿi and Iraqi Shafiʿi understandings of benefit. By focusing on Abu al-Maʿali al-Juwayni's (d. 478/1085) *al-Burhān fī uṣūl al-fiqh*, I show how the Ashʿari-Shafiʿis made the concept of *maṣlaḥa* (benefit) central to their method of deriving legal positions.[7] In contrast, I show that the Iraqi Shafiʿis, exemplified in Abu Ishaq al-Shirazi's (d. 476/1083) *Sharḥ al-Lumaʿ*, gave greater preference to a linguistic analysis of scripture and to identifying consistency across similar cases in their legal determinations. Despite these different emphases, the Iraqi Shafiʿis agreed with their Ashʿari-Shafiʿi counterparts that benefit could be identified in many of the law's causes of legislation (*ʿilal*). In section two, I turn to examining Shafiʿi substantive law by focusing on the example of the dispensation from facing the *qibla* (prayer direction) during travel.[8] The analysis reveals that Shafiʿis made wide use of the benefits they identified in scriptural injunctions to properly apply the law.[9] The third section moves beyond the Shafiʿi school to examining juristic debates about the necessity of guardianship in marriage. What the section reveals

is that jurists of all schools clashed over the function of guardianship and subjected their claims to ongoing critique.[10] Thus, this third section exemplifies the "critical search" for benefit in the classical legal schools, providing reformers with a model for the present.

Human Benefit in 10th-11th Century Shafi'i Legal Theory

In this section, I examine al-Juwayni's *Burhān* and al-Shirazi's *Sharḥ al-Luma'* in order to show two competing understandings of benefit within Shafi'i legal theory of the 10th and 11th centuries. Al-Juwayni's *Burhān* is a mid- to late-11th century text of *uṣūl al-fiqh* that belongs to the Ash'ari-Shafi'i tradition. Prior to al-Juwayni, the foremost theorists within this tradition were Abu Ishaq al-Isfarayini (d. 418/1027) and Ibn Furak (d. 406/1015-6).[11] Both al-Isfarayini and Ibn Furak were trained in Shafi'i substantive law in Iraq. Yet both men also became experts in Ash'ari *kalām* (theology) under the guidance of their master Abu al-Hasan al-Bahili.[12] The men's Ash'arism influenced their *uṣūl al-fiqh* positions. Al-Ash'ari himself had delved into some questions of *uṣūl al-fiqh*, including for instance the question of whether there is a particular linguistic form in the Arabic language to express a command.[13] But for the most part, it was Abu Bakr al-Baqillani (d. 403/1013), a Maliki jurist, who had developed Ash'ari thought into a full-blown theory of *uṣūl al-fiqh*. For this reason, al-Baqillani is often referred to by the simple shorthand "*al-Qāḍī*" in the *Burhān*.[14] In general, these Ash'ari-Shafi'is were confronted with the need to harmonize the *uṣūl al-fiqh* positions of al-Baqillani with those of the Shafi'i school, whose elaboration had begun with al-Shafi'i's *Risāla* and continued with Ibn Surayj's learning circle in Iraq.[15] Sometimes these Ash'ari-Shafi'is encountered tensions between the two streams of thought. This tension is present within the *Burhān*. 'Abd al-'Azim al-Dib, who edited the *Burhān*, provides a list of instances where al-Juwayni departs from al-Shafi'i's positions and a list of instances where he departs from the positions of al-Ash'ari and al-Baqillani.[16] However, it is well to note that al-Juwayni sometimes struck a path independently of both thinkers: Taj al-Din al-Subki found the *Burhān* remarkable precisely because of its author's independent

thought.[17] The 10th- and 11th- century Ashʿari-Shafiʿi stream of *uṣūl al-fiqh* would in turn have a great influence on subsequent Shafiʿi authors of *uṣūl al-fiqh*, such as Abu Hamid al-Ghazali, Fakhr al-Din al-Razi (d. 606/1209), and Sayf al-Din al-Amidi (d. 631/1233). Al-Juwayni ascribes to his predecessors among the Ashʿari *uṣūlī*s (writers of *uṣūl al-fiqh*), which he designates as *al-muḥaqqiqūn* (the verifiers),[18] the theory of benefit (*maṣlaḥa*) that concerns us here.

Al-Juwayni presents the Ashʿari-Shafiʿi theory of benefit in greatest detail in his section on *qiyās* (analogical reasoning).[19] In particular, al-Juwayni ascribes to al-Isfarayini the view that a valid legal cause (*ʿilla*) must bring about a benefit (*maṣlaḥa*).[20] Thus, when a jurist is to perform an analogy, he is to examine the law of the original case (*al-aṣl*) and identify what benefit this law serves. If he cannot find a benefit, then he must abstain from effectuating an analogical argument (*qiyās*). Al-Juwayni grounds his theory of benefit in the practice of the early Muslim community. He responds to a hypothetical interlocutor who questions this method, stating that "since the Lawgiver (*al-Shāriʿ*) does not bind His law to each and every benefit [that humans can rationally identify], and narrators of the past do not identify the specific presumptive evidence upon which the companions relied," then how can he rely upon the method of identifying benefit? Al-Juwayni answers by stating that, "In the times of long ago and the eras that followed them, they did not limit themselves to specified ways [of determining benefit], rather they reasoned independently in the manner of one who sees no end to independent opinion (*istarsala istirsāl man lā yarā li-wujūh al-ra'y intihā*), and they saw the ways of reasoning [on benefits] to be without end…when there was a lack of textuality."[21] Two points are of prime importance already. First, according to this theory, the Lawgiver (i.e., God, but often through the medium of His Prophet) does not always make the benefits of his law explicit. Rather, human beings must find them using their reason. Second, this theory of benefit imagines that there are innumerable human benefits that the law serves which further encourages jurists to explore new benefits that their predecessors have yet to identify.

While al-Juwayni focuses his discussion of benefit in the section on *qiyās*, I would argue that the notion of benefit is central to his thinking on the law more generally. For one, it appears in other sections of the

Burhān. Thus, al-Juwayni invokes the notion of benefit in relation to the *a contrario* (*dalīl al-khiṭāb*) argument.[22] The *a contrario* argument was commonly tackled in books of *uṣūl al-fiqh*. The argument implies that a statement about a group necessitates the contrary for the opposite group. For instance, if the Prophet stated that *zakāt* is owed on pasture grazing sheep, then it follows that no *zakāt* is owed upon the non-pasture grazing, or stable fed, sheep. The *a contrario* argument was controversial with some jurists for both theological and logical reasons.[23] However, al-Juwayni considers an *a contrario* argument as valid on condition that the jurist's conclusion leads to a benefit. If, however, the ruling does not produce a benefit, then al-Juwayni rejects the argument. The notion of benefit also appears in discussing laws for which no textual basis exists (*maṣlaḥa mursala*).[24]

Further, the importance of benefit to al-Juwayni's reasoning on the law is evident in his scriptural hermeneutics. On the surface, al-Juwayni abides by what had become a standard Shafiʿi method of interpreting scripture by dividing an utterance into categories of relative ambiguity. For instance, the meaning of an utterance can be evident or perspicuous to an Arabic speaker (a category of textual clarity referred to as *naṣṣ*).[25] The view that utterances can be perspicuous depends on the further assumption that words have standard meanings. These meanings can be the product of three different histories: 1) a word's original use (*al-waḍʿ*); [26] 2) a word's changed meaning over time (*al-ʿurf*); or 3) a word's technical meaning within scripture (*al-sharʿ*). While a scriptural source that is *naṣṣ* should not be subject to further discussion, al-Juwayni himself recognizes that most of the law is not perspicuous.[27] Texts often fall within the category of *ẓāhir* (possessing an "apparent" meaning), in which a *prima facie* meaning could be abandoned upon closer contextual examination. But what should a jurist assume is the right context of interpretation for the Lawgiver's utterances? It is here that al-Juwayni's appeal to benefit matters to textual hermeneutics. If the Lawgiver links rulings to causes that are beneficial to humans, then benefit is one of the proper contexts through which to understand scripture. We can see that al-Juwayni interprets scripture through the lens of benefit in a famous disputation that took place in 1083 in Nishapur between him and

al-Shirazi on the permissibility of forced marriage.[28] In the disputation, al-Juwayni interprets a *ḥadīth* through the lens of *maṣlaḥa*. He rejects his opponent's interpretation of the *ḥadīth* as legitimating the forced marriage of virgin women because he claims that the Prophet's mention of virginity is not a suitable cause, i.e., it produces no benefit for the bride or her family.[29] The disputation is telling of al-Juwayni's view of benefit as the correct lens through which to derive legal opinions more generally.

Al-Juwayni's legal method fits with his Ashʿari theological commitments. The Ashʿaris had long argued against the Muʿtazila position that God is constrained to make rules based on an objectively rational view of good and bad (*al-ḥusn wa'l-qubḥ*).[30] Against the Muʿtazila, al-Juwayni argues that right and wrong are culturally relative and that God's omnipotence means that He can impose upon humans any rule He wants.[31] But as Anver Emon has shown, the Ashʿaris nonetheless thought that God's *faḍl* (kindness or grace) had created a law that was good for His human creation.[32] We should thus read al-Juwayni's commitment to finding benefit in scripture as part of a more general understanding of divine law.

Before turning to the Iraqi Shafiʿis' theory of *uṣūl al-fiqh*, there is a final point in al-Juwayni's exposition that merits attention. Al-Juwayni states that the jurist should not necessarily adopt the first benefit that comes to mind when seeking the legal cause for a law. Instead, the jurist must subject the benefit he identifies to possible impediments (*ʿawāriḍ*) or invalidators (*mubṭilāt*) that reveal that a purported legal cause is mistaken.[33] Al-Juwayni, like other jurists, had developed a host of technical arguments that could discredit a possible legal cause (*ʿilla*). For instance, a jurist might critique the presumed legal ruling (*ḥukm*) of a jurist (*manʿ al-ḥukm fī al-aṣl*).[34] Alternatively, he might find a counter-example where the ruling is present but where the presumed legal cause is absent, showing that the ruling is not the product of the legal cause (*wujūd al-ḥukm maʿa ʿadam al-ʿilla* or *ʿadam al-taʾthīr*). Alternatively, he might find that the purported legal cause is present in another case but leads to a different ruling (*wujūd al-ʿilla maʿa ʿadam al-ḥukm* or *al-naqḍ*).[35] A jurist could use these potential invalidators of a legal cause monologically, by thinking up potential problems with it. But he could also do so dialogically with other jurists. Indeed, al-Juwayni also calls these invalidators

objections (*iʿtirādāt*), which gestures towards their use by fellow jurists.[36] Jurists' objections to a purported legal cause were typically levelled in disputations.[37]

According to al-Juwayni's student, al-Ghazali, disputations were primarily a means to perform *ijtihād.*[38] Al-Ghazali affirmed two instances in which disputations were obligatory for a jurist tackling questions of controversy (*masā'il al-khilāf*). The first was when a jurist was on the fence about the merits of legal evidence.[39] The disputation became a means to test this evidence. The second was to ensure that there did not exist definitive evidence like a perspicuous text that would make it sinful for the jurist to hold on to a divergent opinion.[40] Critique would reveal whether there was truly definitive evidence for a given question (*mas'ala*). But al-Ghazali also considered numerous reasons why disputations were recommended for a jurist. Included among these reasons was the ability of disputations to allow a jurist to accede to a better position. More generally, al-Ghazali saw the disputation as a recommended means of training a jurist to think more effectively on the law. Al-Ghazali was far from the only jurist of the classical era to see the disputation as an indispensable part of juristic *ijtihād.* Al-Khatib al-Baghdadi states that "the purpose of disputation and debate is to search the truth (*ṭalb al-ḥaqq*)" of God's law.[41] In his summary of al-Baqillani's legal theory, al-Juwayni himself turned to explaining some of the benefits of disputation, which overlapped with those of al-Ghazali;[42] and in his text of *jadal* (dialectic), *al-Kāfiya*, al-Juwayni affirms that disputation is among the most important of obligations because it helps a fellow jurist turn away from falsehood towards the truth.[43] For this reason, the *Kāfiya* gives sustained attention to the objections against a legal cause.[44] Thus, we should read al-Juwayni's statement about subjecting legal causes to impediments and invalidators by reference to a historical context in which disputations were a standard means of evaluating the evidentiary basis of the law. In other words, further scrutiny, often through critique, was as important to the identification of a legal cause as considerations of benefit.

In sum, the Ashʿari-Shafiʿi legal theory saw much of God's law as the product of a multiplicity of benefits whose confirmation depended

on further investigation. On the surface, this view of benefit appears greatly opposed to Iraqi Shafiʿi legal theory. Taking al-Shirazi's *Sharḥ al-Lumaʿ* as exemplary of Iraqi Shafiʿism, we can see that Iraqi Shafiʿis were cautious about incorporating Ashʿari theology within their legal theory.[45] Instead of deference to Abu Ishaq al-Isfarayini, al-Shirazi shows fidelity to the theoretical positions that Ibn Surayj and his students had developed in Baghdad and neighboring cities from the late ninth century onwards.[46] Although we lack many of the texts that Iraqi Shafiʿis composed, this cohort appears to have been less committed to making *maṣlaḥa* a condition for a suitable legal cause.[47] For instance, al-Shirazi's section on *qiyās* identifies several methods of identifying an legal cause (*ʿilla*), none of which depend upon benefit.[48] Rather, al-Shirazi considers that a jurist should seek out the causes for the law through scriptural sources that either explicitly mention them, with words like "because" (*li*) following an injunction, or else implicitly gesture towards them, for instance by including an attribute (*ṣifa*) that serves to single out the cause of the law.[49] If the jurist cannot find a cause in scripture, then al-Shirazi provides him with one of two means of extracting the cause of a case. First, he can seek to identify an instance where the law is in effect and an analogous instance where the law is not, thus permitting him to identify the variable that is responsible for the law (an operation known as *al-ta'thīr*). For example, the permissibility of grape juice suggests that intoxication is the relevant variable accounting for wine's prohibition.[50] Subsumed under this approach is the process of juristic elimination, *al-taqsīm*, in which the jurist goes through all the possible variables that could be the cause for a law and eliminates them until only one is left.[51] Second, the jurist can survey several other cases where the same variables are present to determine if one of these variables is associated with the same law.[52] This amounts to an inductive examination of the law (*shahādat al-uṣūl*) to isolate legal causes. But the clearest indication that al-Shirazi rejects incorporating benefit as a means to derive the law is his statement against an anonymous detractor who claims that disputations seek to find *al-aṣlaḥ* (the most beneficial position). Al-Shirazi responds, "The most beneficial in regards to welfare (*manfaʿa*) has no relation to the apprehension of legal proofs of the law (*adillat al-sharʿ*)."[53] Mariam

Sheibani usefully sums up the *prima facie* position of the Iraqi Shafiʿis, writing that "the anecdotal evidence indicates a strong antipathy towards embedding legal theory in Ashʿarī theology, and more general misgivings about rational theology more broadly."[54]

However, a closer examination of al-Shirazi's legal theory indicates that human benefit is inextricable from God's law.[55] Al-Shirazi states that legal causes are of two types. First, there are legal causes in which the jurist understands the reason for the law (*wajh al-ḥukm*). Al-Shirazi then states: "this is like our saying 'wine is prohibited because of intoxication (*al-shidda al-muṭriba*)'… we know that intoxication is the cause of the prohibition of wine because it leads to corrupt behavior (*al-fasād*), the abandonment of prayer, and the loss of wealth and life."[56] In contrast, the second type of legal causes comprises those for which the jurist does not understand the reason for legislation. The example that al-Shirazi gives is that of the impermissibility of usury on wheat, whose legal cause is wheat's status as an edible (*maṭʿūm*). In al-Shirazi's estimation, God has "hidden [the reason why foodstuff is subject to anti-usury laws] within his knowledge (*ista'tharahu fī 'ilmihi*)."[57] This division between two types of legal causes shows that al-Shirazi sees some laws as based on rationally recognizable benefits.[58]

Thus, a careful comparison between al-Juwayni and al-Shirazi reveals differences and similarities. First, al-Juwayni posits benefit as a means for the identification of legal causes. In contrast, al-Shirazi uses other means (i.e. a linguistic analysis of scripture, the isolation of possible variables, and an inductive study of the law) to identify legal causes.[59] Nonetheless, both men also understand the law as an interplay between fidelity to scripture and a rational search for human benefit. Both accept that an unambiguous text should be followed even if the benefit is not immediately decipherable. And both consider that benefits inherent in God's laws often reveal themselves through engagement with scripture. Lastly, we might note that al-Shirazi as much as al-Juwayni gave great importance to subjecting a purported legal cause to critique, dedicating a section of the *Sharḥ* to ten means of showing a legal cause's incorrectness (*fasād al-'illa*), and providing an analogous treatment within his book of dialectic, *al-Mulakhkhaṣ fī al-Ǧadal*.[60] The two jurists were therefore

part of a culture that subjected legal causes to ongoing contestation. The overlap between the Iraqi and Ashʿari-Shafiʿi view of benefit in text of legal theory had significant consequences for Shafiʿi substantive law in the 10th and 11th centuries. As we shall see in the next section, Ashʿari-Shafiʿis and Iraqi Shafiʿis approached benefit similarly in their substantive legal reasoning.

Before moving to the next section, it is well to ask in what ways the foregoing review of Shafiʿi legal theory provides us with a different model than that of the *maqāṣid*. To start, we can agree with Mohammad Hashim Kamali that the model of *uṣūl al-fiqh* and that of the *maqāṣid* both lead to similar regard to human benefit. As Kamali notes, the difference between the two is procedural.[61] Whereas the *maqāṣid* begins by insisting on protecting or securing a benefit, the 10th- and 11th-century Shafiʿi model insists on fidelity to textuality first, and then demands that jurists seek out the benefit inherent in the command.[62] But there are also two points of departure already apparent between this model and the approach of the *maqāṣid*. The first is the emphasis on the *search* for human benefits. In this model, there is no attempt to pin down a list of objectives or ends that the law serves because the jurists are continually discovering the benefits of God's law through engagement with the text. The second is the need for communal critique over these purported benefits. The identification of a benefit for the Shafiʿis is not enough to secure that benefit's validity; a jurist must allow his legal cause to be subject to objections (*iʿtirādāt*). In short, the model of the classical tradition demands a "critical search" for benefit in the process of uncovering God's law. The next section shows how this search shaped Shafiʿi substantive legal interpretation. I leave the matter of critique to the third and final section of the article.

The Search for Benefit in Substantive Law: The Case of the *Qibla* in Times of Travel

The standard narrative of Islamic legal history might make us skeptical that Shafiʿi substantive law in the 10th and 11th centuries actually paid mind to human benefit, regardless of what we find in books of legal

theory. The Shafiʿis have long been seen as the paradigmatic textualist school of law. This reputation is partly the result of their rejection of "juristic preference (*istiḥsān*)" and the "practice of the people of Medina (*ʿamal ahl al-Madīna*)"—mechanisms associated primarily with the Hanafis and the Malikis. It is also partly an effect of the influence of al-Shafiʿi in strengthening the textual basis of the law across legal schools.[63] As Mohammad Fadel noted over two decades ago, it is a truism in the historiography that al-Shafiʿi is responsible for critiquing and pushing the pragmatic Medinan and Iraqi jurists to adopt methodologies that championed textual proofs for their legal positions.[64] At first blush, the insistence on the textual grounding of the law appears contrary to notions of human benefit. It is tantamount to saying that humans must follow whatever they find in the text rather than what is best for individual flourishing or social harmony. Yet, in line with the legal theories of al-Shirazi and al-Juwayni, the reality is that the focus on textuality did not obviate juristic attention to human benefit so much as displace it onto the text itself. What mattered to Shafiʿis was to understand why the lawgiver gave the rules that he did. In other words, textuality became the site in which the search for benefit took place. This, in turn, came to shape the application of the law.

We can see the attention to discovering human benefits in scriptural injunctions when we focus on actual debates of substantive law within the Shafiʿi school of the 10th and 11th centuries. The example that I examine is the debate over the abandonment of the *qibla* (the proper prayer direction, i.e. facing Mecca) in times of travel. The Shafiʿis had always affirmed that there are only two instances in which Muslims might pray in a direction other than the *qibla*. One of these instances is the optional prayers on a mount during travel (*al-nawāfil ʿalā al-rawāḥil*). An initial glance at any Shafiʿi law manual might mislead the researcher into thinking that the obligation is strictly rooted in textuality. Thus, Abu al-Tayyib al-Tabari (d. 450/1058), judge and head (*raʾīs*) of the Shafiʿis in Baghdad in the middle of the 11th century, grounds the dispensation from facing the *qibla* in the Qur'anic verse: "To God belongs the East and the West, so wherever you turn, there is the face of God" (2:215). Al-Tabari references Ibn ʿUmar who said that the verse "was revealed concerning the

optional prayer in travel, which is prayed wherever your camel turns."[65] Al-Tabari then quotes a series of *ḥadith*s. Among them: "Ibn ʿUmar used to pray during travel upon a mount, saying that the Prophet did this"; ʿAbd Allah b. ʿAmir b. Rabiʿi's father said that "he saw the Prophet pray upon a mount wherever it turned"; and "The Prophet used to pray on his mount towards the East, but if he wished to pray the obligatory prayers (*al-maktūba*), he descended and faced the *qibla*."[66] In short, as we would expect, the Shafiʿi position rigorously depends on textuality.

But upon closer examination, one finds that the Shafiʿis' position also depended upon what they understood to be the Lawgiver's intended meaning (*maʿnā*) behind his scriptural injunctions or his Prophet's actions. Abu al-Hasan al-Mawardi (d. 450/1058), al-Tabari's contemporary, writes in *al-Ḥāwī al-kabīr* that were a person prohibited from praying on a mount it would lead to one of two unfavorable outcomes: either an abandonment of prayer, which would negatively affect their devotion to God, or an abandonment of their travel, which would impact their worldly prosperity.[67] Similarly, al-Shirazi, who was al-Tabari's star student, states that the function of the permission to pray away from the *qibla* is to permit people to travel (*lā yanqatiʿ al-nās ʿan al-sayr*).[68] Later, al-Shirazi notes that the dispensation also allows people to fulfill righteous deeds (*ḥattā lā yanqaṭiʿ ʿan al-ṣalat fī al-safar*). When we turn to al-Juwayni's *Nihāyat al-maṭlab* we find that al-Juwayni expresses the same point of view: "Perhaps the intended meaning (*al-maʿnā*) that legitimates the optional prayers on a mount is that people cannot do without travel and, since the successful one is avaricious with his time and does not spend it without thought, if we did not allow the optional prayers to be performed on a mount, people would either be cut off from their livelihood (*la-inqaṭaʿa al-nās ʿan maʿashihim*) or they would abandon their prayers if they gave preference to travel." Al-Juwayni ascribes this same view to al-Qaffal al-Marwazi (d. 417/1026) and al-Qaffal's teacher, Abu Zayd al-Marwazi (d. 372/982), both of whom are associated with the development of Shafiʿi substantive law in the North Eastern Persian province of Khurasan.[69] Across the different branches of the Shafiʿi school we see a concern with human benefit through balancing between individuals' worldly prosperity and their spiritual growth. Importantly, nothing in the

textual evidence quoted above references spiritual and worldly ends as the legal cause for the abandonment of the *qibla*. At most, one would identify from the three quoted *ḥadīth*s that the legal cause is travel. This suggests that Shafiʿis approached the text with an eye to the benefit it secured.

At first blush, we might wonder if the Shafiʿis were merely curious about the purpose behind God's commands. Put otherwise, are the benefits they identified mere afterthoughts to satiate the mind rather than an intrinsic part of legal derivation? If so, then their exegesis about the reasons for abandoning the *qibla* would be irrelevant to the actual *fatwā*s they gave to their lay Muslim petitioners. Yet, when we examine how jurists elaborated the law on the *qibla* to a variety of circumstances, it becomes evident that the benefit they identified determined the proper application of the law. In particular, we find that the extent to which a traveler experiences hardship (*mashaqqa*) determines how and when the Shafiʿis interpret the permission to pray away from the *qibla*. Thus, if a person is on a boat or on a mount that is large enough for her to turn towards the *qibla* "without any harm" to herself, she should do so.[70] For smaller mounts, the Shafiʿis likewise used the notion of harm to make distinctions between prayers performed while a person is moving (*sā'ir*^{an}) and those performed while she is standing still (*wāqif*^{an}).[71] Thus if a worshipper seeks to pray while her mount is in motion, the Shafiʿis did not require the worshipper to face the *qibla* since this would disturb her travel. If, however, the person prayed while standing still, then they made a further distinction. If this worshipper is part of a caravan (*qiṭār*), then she should pray wherever she is facing because it would disturb the group, particularly if they sought to resume travelling during her prayer.[72] Likewise, if the person is alone but on an obstinate mount, then she should pray where she is facing. Only if the person is travelling alone with a mount that is pliable enough to move with ease should she worry about turning towards the *qibla*. Finally, the Shafiʿis also contended that a person walking should be able to pray in the direction of her travels, but she should turn her head towards the *qibla* when starting the prayer (*takbīrat al-iḥrām*), when bowing (*rukūʿ*), and when prostrating (*sujūd*), because in none of these instances is it difficult for her to do so. In short, the application of the law could not be disconnected from the benefit it aimed to serve.

The Shafiʿis argued against Malik, who contended that the dispensation from facing the *qibla* was only sanctioned for long travels.[73] Since the Shafiʿis considered the material and spiritual benefit of abandoning the *qibla* to be present in short travels too, they permitted it. Likewise, benefit was the basis for disagreement on the application of the law within their own ranks. The Shafiʿi Abu Saʿid al-Istakhri allowed those staying in their location of residence (*al-ḥāḍir*) to pray their optional prayers facing away from the *qibla*.[74] But most Shafiʿis rejected al-Istakhri's position, feeling that it was undercut by the lack of precedent on the part of the Prophet combined with the relative ease of prayer while not travelling. Their invocation of both Prophetic practice and ease is telling of the Shafiʿi attempts to stay true to the precedent laid out in text and to the benefit that they identified by engaging with the text.

There are four conclusions from the foregoing. First, we see that the Shafiʿis read scripture through the prism of benefit. There is no significant difference in this regard between the Shafiʿis of Iraq and the Ashʿari-Shafiʿi position of al-Juwayni. Second, the Shafiʿis used the identified benefit to determine the law's application in a variety of instances. Third, we see in debates with Malik and al-Istakhri that jurists argued over how this benefit can best be secured. Note that the example of the *qibla* pertains to ritual law. In theory, ritual law (*al-ʿibāda*) is that realm of Islamic law whose *raison d'être* is least amenable to human rationality, since jurists have often pointed to how its rules are seemingly arbitrary. For instance, there is no reason that the dawn prayer should consist of two cycles and the dusk prayer should be four. Yet the jurists did not shy away from identifying benefit even on matters of ritual law.

Of course, the case of the abandoned *qibla* in optional prayers on travel is but one example, and may appear limited in scope. Certainly, there are laws for which the Shafiʿis did not provide a benefit. For instance, if Shafiʿis believed that permitting one to provide an expiation before breaking an oath (*taqdīm al-kafāra ʿalā al-ḥinth*) was beneficial to human beings, they did not share how in their books of substantive law.[75] Nonetheless, the commitment to identifying human benefits is rife throughout much of Shafiʿi substantive law. For instance, al-Shirazi affirms that a wife who does not received her entitled financial maintenance from her husband for three

days can demand the dissolution of her marriage (*al-khiyār*).[76] Al-Shirazi's position is based on his concern for the woman's physical needs, stating that the "body cannot survive" without the food and shelter owed to her.[77] Similarly, al-Shirazi affirms that a Muslim leader must undertake a minimum of one yearly military expedition on neighboring enemies to prevent foreign armies from "coveting Muslim lands."[78] And finally, Ibn Surayj considers that an intoxicated person's pronouncement of divorce or the manumission of a slave should be considered valid in order to discourage individuals from becoming intoxicated and performing harmful deeds.[79] In all these instances, different social and religious benefits constitute the prism through which the law is understood and applied. In the next section, I will examine a case that is controversial in modern times, with the hopes of showing how debate over the alleged benefits of the law was essential to the classical tradition. In doing so, I uncover in classical legal practice a model of legal engagement that affirms the need for continued contestation over human benefit.

Contestation Over Purported Benefits: The Case of Marriage Guardianship

I have shown al-Juwayni and al-Shirazi's commitment to subjecting purported benefits to the objections of fellow jurists. My aim in this section is to examine through example how contestation over benefit took shape in the classical period. But before doing so, I wish to return to our earlier discussion on disputation. There, I highlighted that disputations played a central role in a jurist's process of *ijtihād*. Jurists employed the method of disputation (*munāẓara*) to test each other's legal positions. I want to expand on this discussion here and to place particular emphasis on the role that epistemological uncertainty played in making critique a necessary feature of classical Islamic law. To begin, the practice of disputation emerged sometime in the mid- to late-8th-century Iraq and thus we have many reports of al-Shafiʿi debating with the leading Hanafi scholar of the time, Muhammad b. Hasan al-Shaybani.[80] Reports also speak of al-Shafiʿi's commitment to finding the truth through debate.[81] But by the early 10th century, the jurists spoke of the purpose of disputations through the

prism of their disagreements over juristic infallibility (*taṣwīb*).[82] Those that considered that God's law was to be found in one among the many contested positions of jurists (*al-ḥaqq fī qawl wāḥid*) affirmed that disputations served to find the truth of God's law.[83] Al-Juwayni and al-Shirazi both saw disputations as a means to find this truth.[84] In contrast, those that saw all juristic positions to be a correct rendering of God's law primarily saw disputations as a means to improve one's reasoning on a legal question. Al-Ghazali, whose ideas we have examined above, was part of this camp.[85] Despite their differences, both camps agreed that disputations were to be limited to legal questions where the evidence of the jurist was epistemically uncertain. Al-Shirazi sometimes uses the term "*adilla khafiyya*" and Abu Muzzafar al-Samʿani (d. 489/1096) uses the term "*ghāmiḍa*," both of which invoke the idea that the evidence for the law is "hidden" and must be drawn out through close examination.[86] This view of the law as uncertain accords with Aron Zysow's well-known evaluation of Sunni legal theory as accepting the uncertainty of most legal evidence.[87] Thus, disputations were particularly important because the law was an exceedingly tentative enterprise where, for most rulings, no one knew God's law with certainty. By subjecting evidence to critique through disputation, a jurist could hope to confirm or reject the evidence's soundness. We must keep this in mind as we now turn to examining the contestation over the identification of benefit.

Although we possess very few transcripts of disputations, we can see the importance of contestation over benefit in classical law by examining how these debates took place in books of substantive law. Because of its salience to contemporary Muslim reformist thought, let us turn to jurists' debates over marriage guardianship. Marriage guardianship is among the controversial laws of Islam today. Marriage guardianship typically involves a man, primarily a bride's father, acting as guardian (*al-walī*) for a woman whose marriage he contracts.[88] The notion of guardianship can be problematic in modern times because it denies women independence in their marital affairs in two respects. First, some legal schools allowed a guardian to prevent a woman from marrying a man if he was deemed beneath her social status.[89] Moreover, the schools also assumed that a guardian could coerce some categories of women (namely minors or

virgins) into an unwanted marriage.[90] For some Muslims, the premodern doctrine of guardianship should be followed faithfully today. For others, it is gender-biased and must be reformed or abandoned completely.[91] But I will here suggest that there is a third possibility where the debates of jurists on the topic of guardianship should be approached as the beginning of a conversation where nothing is settled and every position is open to revision and critique. The rigor of this specific conversation has been historically limited because of the exclusion of the insights of women and because, as we shall see, misogynistic statements about women abound within it. Nonetheless, reformists can find inspiration today from the classical jurists' aspiration to critical rigor, despite their coming short of it.

Al-Mawardi's *Hāwī* offers a summary of several classical jurists' positions on the necessity of guardianship to a marriage contract. Al-Mawardi begins by presenting the Shafiʿi position that guardianship is a necessity. Shafiʿis presented several scriptural texts in favor of the necessity of guardianship, including the Qur'anic verse "Do not prevent women from marrying their spouses" (2:232), which they reasoned would be a nonsensical command if women could act as their own guardians.[92] Other *ḥadīth*s are far more direct in their wording, stating that "there is no marriage except with a *walī* (guardian)."[93] But the Shafiʿis also spoke explicitly about the reasons for their position. The function of guardianship for the Shafiʿis was twofold. First, it offered protection to a family against shame and dishonor (*al-ʿār wa'l-shanār*).[94] The Shafiʿis worried about allowing a woman to marry a man of lower status.[95] Marrying a man of lower status meant placing the woman under the authority of someone beneath her and it also meant her children would inherit their father's lower lineage.[96] The second function of guardianship was to protect a woman from a difficult and therefore harmful marriage (*al-iḍrār*).[97] One might ask why women were not themselves free to make decisions about personal harm and family honor. The answer is that some Shafiʿis believed women were incapable of making right marriage choices. Al-Shirazi states that a woman is of "deficient intellectual capacities" (*nuqṣān ʿaqlihā*) and can therefore easily be tricked (*surʿat inkhidāʿihā*).[98] Al-Shirazi relies on his distrust of women's capacities

to support the need for male authority. In contrast, al-Juwayni denied that women lacked the intelligence to make sound decisions.[99] For him, guardianship's benefit was to give families a stake in a decision that would affect them as much as the bride. Already, we see that the Shafiʿis contested benefits in justifying the law.

The contestation over the function of guardianship is more pronounced still when one examines jurists' positions outside of the Shafiʿi school. Abu Hanifa adopted a position diametrically opposed to the Shafiʿis by denying the necessity of guardianship. He claimed that so long as the bride possesses the maturity and rational capacities (i.e. adulthood and sanity) that make her independent in financial matters, she is free to contract her own marriage.[100] Abu Hanifa's position suggests there is no benefit in preventing adult and sane women from representing themselves during a marriage contract. Abu Bakr al-Jassas (d. 370/981) would later argue that since men who can manage their financial affairs are not in need of guardianship in marriage, neither are women.[101] I should specify that the Hanafis did not reject guardianship: they recommended that a bride have a guardian. They considered that a guardian protected a woman from social accusations of impudence (*tansib ilā al-waqāḥa*).[102] Thus, Hanafis recognized that even as a woman had the right to contract her own marriage, she could face social criticism for doing so. In their eyes, guardianship protected her as much as her kin. But they departed from the Shafiʿis in their rejection of the alleged intellectual deficiencies of women. For instance, Burhan al-Din al-Marghinani states that a woman's intellect is complete upon attaining the age of maturity.[103]

Malik, for his part, reasoned that a distinction ought to be made between a woman of high and low status.[104] He deemed that a woman of high status needs a guardian to ensure the family's honor is maintained. In contrast, a woman of low status is free to contract her own marriage. Malik's reasoning is consistent with the Shafiʿi and Hanafi view that guardianship aims to uphold a family's honor. Malik reasoned that if a family has little to no honor to uphold, then there is no harm in allowing a woman to contract her own marriage. Al-Mawardi answers Malik by stating that no matter how low a woman's status is, there can always be those of lower status, and it therefore becomes necessary to protect

her and her family from these individuals. Finally, Dawud al-Zahiri subscribed to the view that a virgin woman requires a guardian but that a non-virgin woman does not. He reasons on the basis of a virgin's lack of experience with men—sexual experience, but also more generally, relationship experience. Virginity here acts a legal means to distinguish between those who are likely to make sound marital choices from those who need the direction of their fathers or another man in a protective role.[105] However, al-Mawardi argues that guardianship is still needed after a woman gains sexual experience. In fact, he claims that it is needed even more. Al-Mawardi claims that sexual experience leads women to making unsound marital choices by placing too much emphasis on sexual desires in choosing a spouse. Al-Mawardi here falls into a similar line of misogynistic reasoning as al-Shirazi does when he claims that women possess deficient rational capacities.

In sum, jurists identified three functions of marriage guardianship. The first is the protection of a woman and her family's honor against marrying someone of lower status. The second is the protection of a woman from a difficult marriage to someone with physical and moral defects. The third is the protection of a woman from slanderous accusations of being impudent. However, the jurists disagreed about whether these three aims raised guardianship to the level of a requirement for marriage contracts. The Shafi'is made guardianship a requirement by appealing to women's deficient rational capacities, their ease in being tricked, and their propensity to allow sexual desire to mislead them. The Hanafis allowed a woman to represent herself because an adult woman possesses full intellectual capacities. Dawud allowed a non-virgin woman to dispense with guardianship because she had enough relationship experience to make sound choices. Malik allowed a woman of low status to represent herself because her choice had little impact on her kin's status. This overview of debates on the benefit of guardianship extends my initial conclusions about the Shafi'is' search for the benefits of God's injunctions to other legal schools. Texts are interpreted, qualified, and applied based on understandings of the beneficial function they aim to promote. But more importantly, the overview also shows that the purported benefit of scripture is the object of constant debate.

Each jurist is impelled to respond to the claims of his peers within and outside of a school about the function of the law. This need for debate was entrenched within a classical legal culture that saw critique as the means to ensure that the arguments jurists invoked for their legal positions were as strong as possible.

It is easy to see how the classical model of contestation over the benefit of the law allows contemporary Muslims to continue to engage critically with the law of guardianship today. For instance, dismissing al-Shirazi's claims about women's lesser intellectual capacities, al-Mawardi's claims about women's sexual appetites, or Dawud al-Zahiri's claims about virgins' lack of sufficient experience to make healthy relationship choices bolsters the position that the guardianship of men over women in marriage is unnecessary**.** To say this is less to reject the textual basis of the law than to interpret and apply it correctly. Likewise, many Muslims might find family honor a strange concept within their socio-cultural environment, which would then undercut their need for the institution of guardianship completely. Indeed, there is precedent for this cultural relativism: the leader of the Shafi'is of Khurasan, al-Qaffal al-Marwazi, claimed that only Arab families cared about lineage in determining the status of a spouse and that, therefore, lineage considerations did not apply to non-Arabs.[106] Alternatively, some Muslims might critique the assumption that only a woman and her family is affected by the status of her spouse. Again, there is precedent here too: al-Juwayni's father, Abu Muhammad al-Juwayni, contended that a man's status is also diminished by a lowly spouse.[107] And, if both men and women are affected by the status of their spouse, then guardianship of men over women makes little sense. Of course, it may be the case that some Muslims today prefer bypassing the classical discussions on guardianship altogether. In particular, some might deny that Muslims should engage at all with men who belittled women. Does not engaging with them give more credibility to their claims than they deserve? Moreover, such engagement risks bolstering a power relationship where Muslim women can only speak because of the recognition of men. The conferring of recognition from those in power, although often needed to effect community change, can also be deeply painful for those on the

margins of power. Thus, some might prefer to go back to the Qur'an or to the Qur'an and *sunna* to start a new conversation about the norms that should govern the Muslim community.

Nonetheless, even if some choose to jettison the substance of classical juristic thought completely, they might wish to consider the *model* of contestation over the benefits of the law in their community dialogues. This is because this model presupposes that 1) no human has full insight into the purpose of God's laws and 2) the worth of a position only emerges through debate. This model is presupposed in al-Juwayni's legal theory, which outlines that the innumerable benefits of God's law must be discovered through both textual engagement and through the subjection of legal causes to potential invalidation. But it is also presupposed more generally in the epistemological uncertainty that legitimated disputation. In turn, two consequences follow from this model of contestation for Muslims today. The first is that any community dialogue must move beyond textuality to asking what if any benefit do the texts gesture towards. The second is that any critique that deepens Muslim understandings of the benefit of God's law should be welcome. Of course, historically, Shafi'is like al-Shirazi were adamantly opposed to the participation of lay Muslims in the process of legal derivation, claiming that lay Muslims did not possess the necessary training to engage with legal evidence (*adilla*).[108] But it seems to me that there is a tension between simultaneously upholding the practice of critique as a means to find the benefits of God's law and excluding lay Muslims from this practice. For instance, lay Muslims have as much if not greater insight than male mosque leaders into whether upholding notions of family honor protects or harms them. Thus, the model of contestation over human benefit among 11th century Shafi'is can be invoked to legitimate the participation of lay Muslims in the critical search over the alleged benefits of scriptural injunctions.[109] Put otherwise, this model offers support for the democratization of critique within Muslim communities.

A final thought: we might wonder if the contestation over benefit was more a product of inter-school rivalry than a commitment to allowing one's position to be subject to critique. Indeed, this article has focused on an era where intellectual and political rivalries between legal schools

could be intense.[110] But at the very least, we can say that jurists presented contestation as a good to each other and to their students. Al-Juwayni and al-Shirazi called disputation praiseworthy or good debate (*al-jadal al-ḥasan* or *al-jadal al-maḥmūd*) so long as the jurist sincerely debated for the sake of God.[111] Considering their discourses about disputation and legal uncertainty, we have reason to believe that jurists did not merely seek to defend their positions by appealing to and contesting benefit, but were also seeking to better understand the law.[112]

Conclusion

In this article, I have sought to uncover the understanding of human benefit within the classical Shafiʿi school. I have focused on the Shafiʿi school precisely because it is often identified as the paradigmatic textualist school. I have sought to push back against the view that the Shafiʿis' fidelity to textuality made them less concerned with upholding human goods. I have contended that the Ashʿari-Shafiʿi theory of the law renders human benefit the proper interpretative lens through which to understand the function of the lawgiver's statements (*maʿnā*) in all instances except the very rare instances of perspicuous texts (*naṣṣ*). Few laws are simply the product of the Lawgiver's arbitrary commands. I have also shown how this model of benefit overlaps with Iraqi legal theory, which also recognized that legal causes often reveal a benefit that humans can rationally apprehend (*wajh al-ḥukm*). Through the example of abandoning the *qibla* during travel, I showed that Shafiʿi substantive law functioned through a search for the benefit behind scriptural injunctions. This search ended up determining the application of the law. But I also showed that this model was one in which jurists considered ongoing contestation over the purported benefits of laws as necessary. The example of marriage guardianship revealed that Muslims disagreed with and debated each other over the benefits of guardianship. No jurist was given free rein to claim that a law served human benefit. Rather, all jurists were expected to defend their positions through debate.

I now want to return to the question of the relationship between the classical model of human benefit and reformist calls to use "the model

of the *maqāṣid al-sharīʿa*" to reinterpret the law today. Clearly, the two models have much in common. Like the classical jurists, proponents of the *maqāṣid* model also claim that the law is meant to serve human benefit by protecting a series of human goods. Historically, these goods were enumerated as life, religion, property, lineage, and reason. However, it is evident from al-Ghazali's examples that he recognized a whole host of benefits reflected in the legal causes (*ʿilal*) of his Shafiʿi school.[113] Likewise, Muslim reformers from the last century, such as Ibn ʿAshur, ʿAllal al-Fasi, and Jasser Auda have interpreted the tradition of *maqāṣid* more broadly by asserting that there can be more than the traditional five or six ends that the *sharīʿa* defends.[114] In effect, this broadening of the number of *maqāṣid* resembles more al-Juwayni and the Shafiʿi-Ashʿari theory of *maṣlaḥa* than it does al-Ghazali's discussion of the *maqāṣid* in the *Mustaṣfā*. Thus, in some ways, uncovering the classical model of benefit serves to further justify the method of reformers by showing its deep pedigree within Islamic law. In other words, behind alleged fidelity to textuality lay a deep engagement with how the law fulfils human goods.

But I have also emphasized that contestation over benefit is far more prominent in the classical model than the contemporary *maqāṣid* model. The classical tradition showed great concern with the limits of human rationality in understanding God's law. The recognition of the limits of human understanding of the law led to the continued contestation over alleged benefits of the law in disputations and books. Moreover, the jurists did not see this contestation to be bound to a time period. Rather, contestation was an extension of the obligation of *ijtihād*, which demanded that each individual capable of understanding the proofs (*adilla*) of God's law determine for herself the strongest legal positions.[115] Today, the classical model not only offers legitimacy to engaging scripture through the prism of human benefit (or its cognates, "wisdoms" and "purposes") but it also offers a means for Muslims to rethink how community dialogue over the purpose of the law should take place. According to this model, any critical insight into the benefit of the law facilitates the duty of *ijtihād*. In effect, the classical model legitimates the democratization of Muslim voices today and the necessity of ongoing critique.

Endnotes

1 Examples in the twentieth century include Muhammad al-Ṭahir Ibn ʿAshur, *Maqāṣid al-Sharīʿa al-Islāmiyya*, ed. Muhammad al-Ṭahir al-Missawi (Amman: al-Basha'ir li'l-Intaj al-ʿIlmi, 1998); ʿAllal al-Fasi, *Maqāṣid al-Sharīʿa al-Islāmiyya wa-Makārim-uhā*, 5th ed. (Tunis: Dar al-Gharb al-Islami, 1993); Rashid al-Ghannushi, *al-Ḥurriyāt al-ʿĀmma fi al-Dawlat al-Islāmiyya* (Beirut: Markaz Dirasat al-Wahdah al-ʿArabiyya, 1993), 39; and Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 59.

2 Mohammad Hashim Kamali, "Goals and Purposes of *Maqāṣid al-Sharīʿa*: Methodological Perspectives" in *The Higher Objectives of Islamic Law: The Promises and Challenges of Maqāṣid al-Sharīʿa,* ed. Idris Nassery et al. (Lanham: Lexington Books, 2018), 8; Jasser Auda, *Maqāṣid al-Sharīʿa: A Beginner's Guide* (Herndon: IIIT, 2008), 18.

3 This peripheral status is amplified by the modest role that al-Ghazali initially conferred to the *maqāṣid al-sharīʿa*: the *maqāṣid* was not first formulated as a theory of the law in its entirety. Rather, al-Ghazali conceived of it as a theory for when the text is silent (*maṣlaḥa mursala*); see Abu Hamid al-Ghazali, *al-Mustaṣfā min ʿIlm al-Uṣūl*, 2 vols. (Beirut: Dar al-Nafa'is, 2011), 1:478.

4 The idea that the law must conform to general principles like the preservation of life or religion leaves unanswered "who should determine what are the *maqāṣid*" and "who should determine when they are violated?" See Ayesha Chaudhury, "How Objective Are the Objectives (*Maqāṣid*)? Examining Evolving Notions of the Sharīʿah through the Lens of Lineage (*Nasl*)," in *The Higher Objectives of Islamic Law: The Promises and Challenges of Maqāṣid al-*Sharīʿa, ed. Idris Nassery et al. (Lanham: Lexington Books, 2018), 264-265.

5 The relationship between *maṣlaḥa* and the *maqāṣid* is frequently noted in secondary literature. See Adis Duderija, "Contemporary Reformist Muslim Thought and Maqāṣid cum Maṣlaḥa Approaches to Islamic Law: An Introduction," in *Maqāṣid al-Sharīʿa and Contemporary Reformist Muslim Thought: An Examination*, ed. Adis Duderija (New York: Palgrave Macmillan, 2014), 2-3.

6 Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, Reprinted ed. (Oxford: Clarendon Press, 1975), 11; Ahmed El-Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 69-70.

7 Al-Juwayni, *al-Burhān*, ed. ʿAbd al-ʿAẓim al-Dib, 2 vols. (np. 1979), 2:798-790. Juwayni attributes the position to al-Isfarayini, whose works on *uṣūl al-fiqh* have not survived, ibid., 2:802; For the *uṣūl* of the other significant Shafiʿi of the era, see Abu Bakr ibn Furak, *Kitāb al-Ḥudūd fī Uṣūl al-Fiqh*, ed. Abdel Haleem, *BSOAS* 54 no.1 (1991).

8 Al-Juwayni, *al-Burhān*, 2:802-804.

9 Al-Juwayni justifies the dispensation by reference to two human benefits, namely peoples' livelihoods and their pious pursuits. Al-Juwayni, *Nihāyat al-Maṭlab*, ed. ʿAbd al-ʿAzim al-Dib, 20 vols. (Jedda: Dar al-Minhaj, 2017), 2:71.

10 E.g. al-Subki, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 10 vols. (Cairo: ʿIsa al-Babi al-Halabi, 1964), 4:254, where al-Juwayni and Abu Ishaq al-Shirazi debate over the suitability of virginity as a legal cause (*ʿilla*) for forced marriage.

11 Abu Ishaq al-Shirazi, *Ṭabaqāt al-Fuqahā'*, ed. Ihsan ʿAbbas (Beirut: Dar al-Ra'id al-ʿArabi, 1970), 126-127.

12 Al-Subki, *Ṭabaqāt*, 4:127-135, 4:256-262.

13 al-Juwayni, *al-Burhān*, 1:212; Ibn Furak conserves some of al-Ashʿari's positions in his *Mujarrad Maqālāt al-Shaykh Abī al-Ḥasan al-Ashʿarī*, ed. Daniel Gimaret (Beirut: Dar al-Mashriq, 1987), 293.

14 E.g. al-Juwayni, *al-Burhān*, 1:219.

15 Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʿī* (Leiden: Brill, 2007), 13. On Ibn Surayj, see Wael B. Hallaq, "Was Al-Shafiʿī the Master Architect of Islamic Jurisprudence?," *International Journal of Middle East Studies* 25, no. 4 (1993), 587–605; Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 125–28; al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, 112; al-Subkī, *Ṭabaqāt al-Shāfiʿiyya*, 3:21-39.

16 al-Juwayni, *al-Burhān*, 2:1443-1448.

17 Al-Subki, *Ṭabaqāt*, 5:192.

18 Al-Juwayni, *al-Burhān*, 2:798-790.

19 Al-Juwayni's *Kitāb al-Talkhīṣ* indicates that al-Baqillani did not subscribe to the view that a precondition for the precondition for the correct legal cause is benefit (*maṣlaḥa*), which suggests that the theory originated with the Shafiʿis of the Ashʿari stream; *al-Talkhīṣ fī uṣūl al-fiqh*, ed. Muḥammad Hasan Ismaʿil Shafiʿi, 3 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 2003), 3:247-254.

20 Al-Juwayni uses the technical language of *ikhāla* (suggestiveness) and *munāsaba* (suitability) to distinguish a legal cause that is beneficial from one that is not. For secondary literature on *maṣlaḥa*'s use in finding the *ratio legis* of a case, see Felicitas Opwis, Maṣlaḥah *and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010), 142; Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood, 2013), 207.

21 Al-Juwayni, *al-Burhān*, 2:803-804.

22 Ibid., 1:466-467.

23 Felicitas Opwis, "Shifting Legal Authority from the Ruler to the *'Ulama'*: Rationalizing the Punishment for Drinking Wine During the Saljuq Period," *Der Islam* 86, no. 1 (2011): 65–92 at 79–80.

24 Al-Juwayni presents three opinions on the topic, at *al-Burhān*, 2:1113-1114; see also al-Ghazali, *al-Mankhūl min Taʿliqāt al-Uṣūl*, ed. Muhammad Hasan Hitu (Damascus: n.p. 1970), 354.

25 Al-Juwayni, *al-Burhān*, 1:236.

26 On the theory of *waḍʿ*, see Bernard Weiss, "'Ilm al-waḍʿ: An Introductory Account of a Later Muslim Philological Science," *Arabica* 34, no. 3 (1987): 339-356; Muhammad Yunus Ali, *Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication* (London: Routledge, 2000), 15-18.

27 On the general theory of hermeneutics of jurists, see David Vishanoff, *The Formation of Islamic Hermeneutics How Sunni Legal Theorists Imagined a Revealed Law* (New Haven: American Oriental Society, 2011).

28 The disputation is reported in al-Subki, *Ṭabaqāt*, 5:214–18. For more on this disputation, see Youcef Soufi, "Pious Critique: Abū Ishāq al-Shīrāzī and the 11th Century Practice of Juristic Disputation (*Munāẓara*)" (Ph.D. dissertation, University of Toronto, 2017), 197-229; and Sohaira Siddiqui, "*Jadal* and *Qiyās* in the Fifth/Eleventh Century: Two Debates between al-Juwaynī and al-Shīrāzī," *Journal of American Oriental Society* 139, no. 4 (2019): 923–44.

29 Al-Subki, *Ṭabaqāt,* 5:217.

30 Al-Juwayni, *al-Burhān*, 1:10.

31 Ibid., 1:12.

32 Anver Emon, *Natural Law Theories in Islam* (Oxford: OUP, 2010), 132, 133. See also Zysow's analysis of *luṭf* among Muʿtazilī thinkers in Aron Zysow, "Two Theories of the Obligation to Obey God's Commands," in *The Law Applied: Contextualizing the Islamic Shariʿa*, ed. Peri Bearman, Wolfhart Heinrichs, Bernard G. Weiss (London: I.B. Tauris, 2008), 397-331 at 408.

33 Al-Juwayni, *al-Burhān*, 2:802.

34 Ibid., 2:943.

35 Ibid., 2:1011.

36 Ibid., 2:965; see also al-Ghazali, *al-Mankhūl*, 401.

37 For more on the practice of *munāẓara*, see George Makdisi, *The Rise of Colleges* (Edinburgh: Edinburgh University Press, 1981), 128-140.

38 Al-Ghazali, *al-Mustaṣfā*, 2:901-902. See also al-Baṣri, *al-Muʿtamad fī uṣūl al-fiqh*, 2 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 1983), 2:384; and al-Jassas, *al-Fuṣūl fī al-uṣūl*, ed. Muḥammad Tamir, 2 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 2010), 2:423. For al-Ghazali's critique of the disputation, see al-Ghazali, *Iḥyā ʿUlūm al-Dīn*, ed. Muhammad Dali Balta, 4 vols. (Beirut: al-Maktaba al-ʿAsriyya, 2015), 1:60-68.

39 Al-Ghazali, *al-Mustaṣfā*, 2:901.

40 Ibid.

41 Al-Baghdadi, *Kitāb al-Faqīh wa'l-mutafaqqih* (Riyadh: Dar Ibn Ḥazm, 2014), 282.

42 Al-Juwayni, *al-Talkhīṣ fī Uṣūl al-Fiqh*, 3:325. Abu Bakr al-Baqillani, *al-Taqrīb wa'l-Irshād* (*al-Ṣaghīr*), 3 vols., ed. Zunayd (Beirut: Mu'assasat al-Risala, 1997), 1:287

43 Al-Juwayni, *al-Kāfiya*, ed. Fawqiyya Husayn Muhammad (Cairo: ʿIsa al-Babi al-Halabi, 1979), 24.

44 Our transcripts from al-Juwayni's disputations with al-Shirazi also show the two jurists providing objections to their respective legal causes. Al-Subki, *al-Ṭabaqāt*, 5:209; 5:214.

45 Al-Shirazi typically gives preference to the views of leading Iraqi Shafiʿis in substantive law over those of al-Baqillani, Ibn Furak, or Abu Ishaq al-Isfarayini. However, on questions of epistemology, al-Shirazi tends to more easily incorporate al-Baqillani's thought. See al-Shirazi, *Sharḥ al-Lumaʿ*, 146-149. For the relationship of al-Shirazi to Ashʿarism, see Éric Chaumont, "Encore au sujet de l'aš'arisme d'abū isḥāq al-Šīrāzī," *Studia Islamica* 74 (1991): 167-177.

46 Youcef Soufi, "Why Study Uṣūl al-Fiqh?": The Problem of *Taqlīd* and Tough Cases in 4th-5th /10th-11th Century Iraq" *Islamic Law and Society* 28, no. 1-2 (2021): 1-31 at 6-7; Ahmed El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory," *Journal of the American Oriental Society* 137:3 (2017), 505–15.

47 A cursory examination of al-Shirazi's *Ṭabaqāt*, 108-127 reveals that this cohort composed several texts of *uṣūl al-fiqh*. Ahmed El-Shamsy has studied introductions to *furūʿ* texts among this cohort in order to analyze their *uṣūl al-fiqh* positions; see El-Shamsy, "The Wisdom of God's Law: Two Theories" in *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss* (Leiden: Brill: 2014), 19-37.

48 Al-Shirazi, *Sharḥ al-Lumaʿ*, 2:844-846.

49 Al-Shirazi divides *ijtihād* into *al-qiyās al-jallī*, which requires no *ijtihād* because the legal cause is identified through a definitive proof (*al-qaṭʿ*) and *al-qiyās al-khafī*, which can be discovered either through a textual source or through extraction (*istinbāṭ*). See al-Shirazi, *Sharḥ al-Lumaʿ*, 2:801-806.

50 Ibid., 2:858-860.

51 Ibid., 2:860.

52 Ibid., 2:860-863.

53 Ibid., 2:1055.

54 Mariam Sheibani, "Islamic Law in an Age of Crisis and Consolidation: ʿIzz al-Dīn ibn ʿAbd al-Salām (577-660/1187-1262) and the Ethical Turn in Medieval Islamic Law" (Ph.D. diss., University of Chicago, 2018), 274.

55 Mariam Sheibani's dissertation usefully places Juwayni's Ashʿari theory of *maṣlaḥa* within a framework that identifies four stages of evolution. She credits Juwayni and the Khorasanians with introducing *maṣlaḥa* into Shāfiʿī legal hermeneutics.

56 Al-Shirazi, *Sharḥ al-Lumaʿ*, 2:843.

57 Ibid., 2:799.

58 Moreover, in another passage of the *Sharḥ al-Lumaʿ* (2:789), al-Shirazi notes the opinion that all of God's law serves to benefit human beings (*al-aḥkām innamā shuriʿat li-maṣlaḥat al-mukallafīn*), a claim he does not deny. Chaumont notes other instances where al-Shirazi seems likewise on the fence regarding whether the law is ultimately for human benefit or not; see Eric Chaumont, "La notion de *wajh al-ḥikmah* dans Les *uṣūl al-fiqh* d'Abū Isḥāq al-shīrāzī (m. 476/1083)" in *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss* (Leiden: Brill, 2014), 39-53 at 47.

59 Ahmad El Shamsy has made a similar point in "The Wisdom of God's Law."

60 Al-Shirazi, *Sharḥ al-Lumaʿ*, 2:871

61 Kamali, "Goals and Purposes," 7, 11-12.

62 Kamali notes that *uṣūl al-fiqh*'s emphasis on textuality can be problematic in modern times because the importance of benefit can often be lost. I agree with this assessment but would argue that this is the product of a modern assumption that textuality is more often perspicuous than jurists of the past actually believed. This then leads to claims that the text must be applied, according to the slogan, "there is no *ijtihād* if there is a text" (*lā ijtihād bi-naṣṣ*).

63 Murteza Bedir, "An Early Response to Shāfiʿī: ʿĪsā b. Abān on the Prophetc Report (*khabar*)," *Islamic Law and Society* 9, no. 3 (2002): 285-311; Sherman Jackson, "Setting the Record Straight: Ibn al-Labbād's 'Refutation of al-Shāfiʿī,'" *Journal of Islamic Studies* 11, no. 2 (2000): 121-146.

64 Mohammad Fadel, "'*Istiḥsān* is Nine-Tenths of the Law': The Puzzling Relationship of *Uṣūl* to *Furūʿ* in the Mālikī Madhhab," in *Studies in Islamic Legal Theory*, ed. Weiss, 161-76 at 161-162. On the influence of al-Shafiʿi on the other legal schools, see Umar Faruq Abd-Allah Wymann-Landgraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013).

65 Abu al-Tayyib al-Tabari, *al-Taʿliqa al-Kubra fī al-Furūʿ: Min Bāb mā Yufsid al-Mā' Ḥattā Nihāyat Bāb Istiqbāl al-Qibla*, ed. ʿUbayd b. Salim al-ʿUmari (PhD diss., Islamic University of Medina, 1998-1999), 748.

66 Ibid., 749.

67 Abu al-Hasan al-Mawardi, *al-Ḥāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfiʿī: Wa-Huwa Sharḥ Mukhtaṣar al-Muzanī*, ed. ʿAli Muhammad Muʿawwaḍ and ʿAdil ʿAbd al-Mawjud, 18 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 1994), 2:73.

68 Abu Isḥaq al-Shirazi, *al-Muhadhdhab fī Fiqh al-Shāfiʿī*, ed. Zunayd, 6 vols. (Damascus: Dar al-Qalam, 1992), 1:231-233.

69 Historians of the Shafiʿi school spoke about the formation of distinct Iraqi and Khurasanian branches of Shafiʿism. See Muḥyi al-Din al-Nawawi, *al-Majmūʿ: Sharḥ al-Muhadhdhab*, ed. Zakariyya Yusuf, 17 vols. (Cairo: Matbaʿat al-ʿAsima, 1966), 1:107.

70 Al-Shirazi, *al-Muhadhdhab*, 1:231.

71 Al-Shirazi, *al-Muhadhdhab*, 1:232; al-Mawardi, *al-Ḥāwī*, 2:73; al-Tabari, *al-Taʿliqa.*

72 Al-Shirazi, *al-Muhadhdhab*, 1:232; al-Mawardi, *al-Ḥāwī*, 2:75; al-Tabari, *al-Taʿliqa*, 751.

73 Al-Shirazi, *al-Muhadhdhab*, 1:334. The Shafiʿis themselves invoked the length of travels as a condition for other legal questions. For instance, they claimed that one could shorten and combine prayers only in travel that was the equivalent of a two-day journey.

74 Al-Tabari, *al-Taʿliqa*, 1:750; al-Shirazi, 1:233; al-Juwayni, *Nihayat*, 2:72.

75 Al-Shirazi, *al-Muhadhdhab*, 4:527; Abu al-Muhasin al-Ruyani, *Baḥr*, 10:393-97; Abu al-Husayn al-ʿImrani, *al-Bayān fī Madhhab al-Imām al-Shāfiʿī*, ed. Qasim al-Nuri, 14 vols. (Beirut: Dar al-Minhaj, 2000), 10:585-89.

76 Al-Shirazi, *al-Muhadhdhab*, 4:614; al-Shafiʿi, *Kitāb al-Umm*, ed. Rifʿat Fawzi ʿAbd al-Muttalib, 11 vols. (Mansoura: Dar al-Wafa' li'l-Ṭibaʿa wa'l-Nashr wa'l-Tawziʿ, 2008), 6:235.

77 Al-Shirazi, *al-Muhadhdhab*, 4:615.

78 Ibid., 5:228.

79 Ibid., 4:279.

80 For a collection of al-Shafiʿi's disputations, see Fakhr al-Razi, *Manāqib al-Imām al-Shāfiʿī*, ed. Muhammad Majazi al-Saqqa (Cairo: Maktabat al-Kulliyyat al-Azhariyya, 1986), 271-296.

81 Al-Baghdadi, *al-Faqīh*, 252.

82 For a discussion on *taṣwīb*, see Aron Zysow, "Muʿtazilism and Māturīdism in Ḥanafī Legal Theory," in *Studies in Islamic Legal Theory*, ed. Weiss, 235–65.

83 Abu Yaʿla b. al-Farra', *al-ʿUdda fī uṣūl al-fiqh*, ed. Muḥammad ʿAbd al-Qadir ʿAṭa, 2 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 2002), 2:427; al-Baghdadi, *al-Faqih*, 286.

84 Al-Juwayni, *al-Kāfiya*, 24; al-Shirazi, *Sharḥ*, 2:1054. Al-Juwaynī himself championed an intermediate position between fallibilists and infallibilists, stating that while God's law is singular, jurists are correct insofar as they are tasked with engaging in *ijtihād* (i.e. attempting to find God's law), rather than with actually finding God's law; al-Juwaynī, *Kitāb al-Ijtihād*, in *al-Burhān*, 2:1323-1325. Al-Juwaynī's position mirrored that of Ibn Surayj, which al-Shīrāzī saw as a third position in the debate on juristic infallibility; see al-Shīrāzī, *Sharḥ*, 1049-1050.

85 Al-Ghazālī, *al-Mustaṣfā*, 2:892; al-Jassas, *al-Fuṣūl*, 2:400; Abu al-Husayn al-Basri, *al-Muʿtamad fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1983), 2:370, 384.

86 Al-Shirazi, *Sharḥ*, 2:1063-1064; Abu al-Muzzafar al-Samʿani, *Qawāṭiʿ al-Adilla fī al-Uṣūl*, ed. Muhammad Ismaʿil al-Shafiʿi, 2 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 1997), 2:308.

87 For discussions on uncertainty in the law, see Zysow, *Economy of Certainty*, 1.

88 Kecia Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, ed. Asifa Quraishi and Frank E. Vogel (Cambridge: Harvard University Press, 2008), 11-45.

89 Ayesha Chaudhry contends that contemporary Muslims inhabit a cosmology that assumes the equality of men and women before God. She contends that premodern jurists did not share this view, seeing God, men, and women in a hierarchical relationship: see her *Domestic Violence and the Islamic Tradition* (Oxford: Oxford University Press, 2014), 10.

90 Depending on the school, a woman who was a minor (largely, though not entirely determined by puberty) or a virgin could be forced into marriage. The Shafiʿis limited coercion in marriage to a woman's father or grandfather. A son who was still a minor could also be forced into marriage; see Ali, "Marriage in the Classical Islamic Jurisprudence," 32.

91 Although dealing with the topic of domestic abuse, Chaudhry's typology of traditionalists, neotraditionalist, progressives, and reformers provides a sense of the different ways in which problematic gender laws are treated in Muslim communities today.

92 Al-Mawardi, *al-Ḥāwī*, 9:39; al-Shafiʿi, *al-Umm*, 6:31-33.

93 Al-Mawardi, *al-Ḥāwī*, 9:40.

94 Abu al-Mahasin al-Ruyani, *Baḥr al-Madhhab fī Furūʿ al-Madhhab al-Shāfiʿī*, ed. Tariq Fathi al-Sayyid, 14 vols. (Dar al-Kutub al-ʿIlmiyya, 2009), 9:99.

95 For a list of considerations for status, see al-Mawardi, *al-Ḥāwī*, 9:101-106; al-Shirazi, *al-Muhadhdhab*, 4:131-133. Al-Tabari lists Abu ʿAli b. Abi Hurayra as the Shafiʿi scholar who posited five of the most common measures of *kafāʾa*; al-Tabari, *al-Taʿliqa al-Kubrā fī al-Furūʿ: Kitāb al-Nikāh ilā Qism al-Nushūz*, ed. Yusuf b. ʿAbd al-Latif ʿAbd Allah al-ʿAqil (PhD diss., Islamic University of Medina, 2005), 249. For the Hanafi position on *kafāʾa*, see Abu Bakr al-Jassas, *Sharḥ*, 4:251-254.

96 Mohammad Fadel, "Reinterpreting the Guardian's Role in the Islamic Contract of Marriage: The Case of the Maliki School," *The Journal of Islamic Law* 3 (1998): 1–26; al-Mawardi, *al-Ḥāwī*, 9:101-102.

97 For example, al-Juwayni, *Nihāyat*, 12:152–53

98 Al-Shirazi, *al-Muhadhdhab*, 4:118.

99 Al-Juwayni, *Nihāyat*, 12 92.

100 Al-Mawardi, *al-Ḥāwī*, 9:38. Al-Shaybani, *Kitāb al-Hujja ʿalā Ahl al-Madīna*, ed. Mahdi Hasan al-Kilani al-Qadiri, 4 vols. (Beirut: ʿAlam al-Kutub, 1983 (rep. from the Hyderabad, 1965 edition)), 3:115. Abu al-Barakat al-Nasafi, *Kanz al-Daqāʿiq*, ed. Saʾid Bakdash (Beirut: Dar al-Basha'ir al-Islami, 2011) 254; al-Quduri, *Mukhtaṣar al-Qudūrī*, ed. Kamil al-ʿAwida (Beirut: Dar al-Kutub al-ʿIlmiyya, 1997), 147.

101 Abu Bakr al-Jassas, *Sharḥ al-Ṭaḥāwī*, 4: 273-274. But Abu Hanifa also believed that families had a right to uphold their honor and for that reason, he believed they could object to a marriage after the fact if the husband was of lower status, and could petition a court for the separation of the couple.

102 Burhan al-Din al-Marghinani, *al-Hidāya Sharḥ Bidāyat al-Mubtadī*, 2 vols. (Beirut: Dar al-Arqam ibn Abi al-Arqam, n.d.), 1:231.

103 Ibid.

104 Al-Mawardi, *al-Ḥāwī*, 9:44. Sahnun, *al-Mudawwana al-Kubrā*, 16 vols. (Cairo: Matbaʿ al-Saʿada, 1904-1905), 4:20.

105 Al-Mawardi, *al-Ḥāwī*, 9:44.

106 Al-Baghawi writes: "The Shaykh al-Qaffal said, may God have mercy on him: 'Lineage is considered for the Arabs, but not the non-Arabs [*al-naṣab yuraʿa fī al-ʿArab dūn al-ʿAjam*]'"; Abu Muhammad al-Baghawi, *al-Tahdhīb fī Fiqh al-Imām al-Shāfiʿī*, eds. ʿAdil al-Mawjud and ʿAli Muʿawwaḍ, 8 vols. (Beirut: Dar al-Kutub al-ʿIlimiyya, 1997), 5:298. Al-Rafiʿi notes that al-Qaffal was not alone in this view; Abu al-Qasim al-Rafiʿi, *al-ʿAzīz: Sharḥ al-Wajīz*, eds. ʿAdil al-Mawjud and ʿAli Muʿawwad, 13 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 1997), 7:575.

107 Al-Juwayni, *Nihāyat al-Maṭlab*, 12:158.

108 Al-Shirazi, *Sharḥ*, 2:1011.

109 Al-Shirazi recognized that benefits are accessible to all rational minds; al-Shirazi, *Sharḥ*, 2:1055.

110 Richard Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge: Harvard University Press, 1972), 31-32; Sohaira Siddiqui, *Law and Politics under the ʿAbbasids: An Intellectual Portrait of al-Juwaynī* (Cambridge: Cambridge University Press, 2019), 57.

111 Al-Juwayni, *al-Kāfiya*, 22-24; al-Shirazi, *Ṭabaqāt al-Fuqahā'*, 112.

112 Al-Shirazi, *Sharḥ*, 2:1054.

113 Al-Ghazali, *al-Mustaṣfā*, 1:478-479.

114 Ibn ʿAshur, *Maqāṣid*, 411-519; al-Fasi, *Māqāṣid*, 225; Auda, *Maqasid*, 8-9; On Ibn ʿAshur, see Felicitas Opwis, "Ibn ʿĀshūr's Interpretation of the Purposes of the Law (*Maqāṣid al-Sharīʿa*): An Islamic Modernist Approach to Legal Change," in ed. Idris Nassery et al. (Lanham: Lexington Books, 2018), 111-130.

115 On the obligation of *ijtihād*, see al-Shirazi, *Sharḥ*, 2:1012-1013; al-Samʿani, *Qawāṭiʿ*, 2:341; al-Juwaynī, *Kitāb al-Ijtihād*, 2:1339-1341.

Maqaṣid and the Renewal of Islamic Legal Theory in ʻAbdullah Bin Bayyah's Discourse

REZART BEKA

Abstract

This article investigates the central role assigned to *maqāṣid* by ʻAbdullah Bin Bayyah (b. 1935) in his project of renewal of *uṣūl al-fiqh*. He presents maqāṣid as crucial for the functioning and

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widening of the system of ratiocination (*manẓūmat al-taʿlīl*) and inference (*istidlāl*). In his theory of renewal, Bin Bayyah expands the role of *maqāṣid* in *uṣūl al-fiqh* beyond the system of ratiocination to all the chapters of *uṣūl al-fiqh*. In this context, he provides more than thirty ways in which *maqāṣid* are blended into the texture of Islamic legal theory and are necessary for its sound functioning. In this way, he tries to demonstrate that *maqāṣid* are *uṣūl al-fiqh* itself and its heart. This article explores the discursive strategies adopted by Bin Bayyah to establish the relevance of *maqāṣid* for the renewal of *uṣūl al-fiqh* and offers a succinct critical appraisal of Bin Bayyah's reasoning on the topic. It argues that Bin Bayyah is successful in demonstrating the indispensability of *maqāṣid* for any project of renewal of *uṣūl al-fiqh*, but falls short in proving that *maqāṣid* are *uṣūl al-fiqh* itself and its heart.

The call for renewal (*tajdīd*) of Islamic Law has occupied a prominent place in contemporary Islamic thought. In order to respond to the new realities created by modernity and the perceived ossification of the traditional Islamic Law, Muslim scholars have proposed various and often incommensurable reform proposals that aim to restore the vigor of *sharīʿa* and its relevance for modern times.[1] Part of this impetus for reform has manifested in various intellectual projects of renewal of the very methodology of Islamic legal theory (*uṣūl al-fiqh*). Contemporary Muslim scholars have identified the rigidity of Islamic legal theory, its presupposed overconcern with textual/linguistic analysis, and its disregard for the "objectives of sharīʿa" (*maqāṣid al-sharīʿa*) as the main reasons behind the inability of classic Islamic legal theory to respond adequately to modern realities.[2] Reopening the gates of *ijtihād* in legal theory and the introduction of rational and non-literal considerations in its structure have constituted some of the solutions offered to guarantee the relevance of *sharīʿa* in the contemporary world. The reform of Islamic legal theory pursuant to the theory of the objectives of the *sharīʿa* has appeared prominently in recent proposals of reform.[3] The infusion of the methodology of Islamic legal theory with *maṣlaḥa/*

maqāṣid considerations has been increasingly perceived as necessary to make it responsive to the new dynamics of modern life and sufficiently flexible to accommodate the necessary legal/hermeneutical adjustment needed for the purpose.

ʿAbdullah Bin Bayyah (b. 1935) is an important voice in ongoing discussions over the renewal of Islamic legal theory. Considered by the Muslim scholarly community to be one of the leading contemporary legal scholars, Bin Bayyah has dedicated a series of writings to the topic of the relation between the *maqāṣid* and legal theory along with the reform of Islamic legal theory through the objectives of *sharīʿa*.[4] Bin Bayyah has lamented the fact that in the history of Islamic Law, legal theory and *maqāṣid* have been conceived as separate from each other. More specifically, *maqāṣid* have often been considered a supplement or an afterthought to Islamic legal theory.[5] Bin Bayyah's primary concern has thus been to construct a legal framework that allows for the integration of *maqāṣid* into its very structure. Bin Bayyah goes so far as to present *maqāṣid* as the heart of Islamic legal theory, while attempting to provide the theory of *maqāṣid* with the needed *uṣūlī* rigor necessary to dispel the common objection which conceives the objectives of *Sharīʿa* as subjective, inherently versatile and unregulated. In order to accomplish this twofold aim, in his project of renewal, Bin Bayyah adopts a series of discursive strategies. In this paper, we will try to unravel the nature of these discursive strategies, explain how they are situated in Bin Bayyah's overall legal reform project, and offer a succinct critical appraisal of Bin Bayyah's reasoning on the topic.

A Neo-Traditionalist Reformist Project

Contemporary Islamic thought has witnessed a series of attempts of renewing Islamic legal theory. Some traditionalist scholars have categorically rejected such calls for renewal.[6] In contrast, in some modernist circles, Islamic legal theory has been perceived as in irreversible crisis, obsolete, a pre-modern conceptual legal framework that needs to be supplanted by modern and novel legal hermeneutics that reflect the needs of the modern condition.[7] Bin Bayyah rejects

the modernist-revisionist call for the sidestepping or the substantial reconfiguration of Islamic legal theory. Nevertheless, he acknowledges the need for an organic renewal that will restore its rigor in order to respond adequately to modern challenges. He grounds his position on the conviction that modernity and its new socio-political and religious realities constitute an epistemic shift from the pre-modern world.[8] The new realities necessitate the reconsideration of many traditional Islamic legal rulings and the consequent revision or adjustment of some of the hermeneutical tools and mechanisms of legal theory. In this regard, Bin Bayyah states:

> The classical legal extrapolations were correct in their time, and some continue to be correct. The new and modern extrapolations that are based on a sound foundation as regards ascertaining the *ratio legis* are also correct. To a certain extent they resemble the relationship between classical mathematics, which provided plausible solutions within the epistemic and realist paradigms of their time, and modern mathematics, which provides solutions that are plausible and relevant for the age in which we live.[9]

According to Bin Bayyah, contemporary calls for the renewal of Islamic legal theory has taken three forms: 1) the simplification of its very subject-matter (*mādda*), i.e., reformulating Islamic legal theory in a way that will facilitate its comprehension by the modern readers; 2) the trimming or alleviation of Islamic legal theory from perceived unnecessary and unrelated elements, like logics and theology—including simplifying the terminology of Islamic legal theory by purifying it of unnecessary intricate technicalities; and 3) the transcending of the conditions of regulation (*al-inḍibāṭ*) in the characteristic (*waṣf*) through which the efficient cause is inferred, in order to be content with the wisdom (*ḥikma*) and producing legal norms in accordance only with the dictates of *maṣlaḥa*.[10] In Bin Bayyah's view, all these proposals lack legal clarity and direction. Among them, the proposal to simplify the procedures and terminology of Islamic legal theory is worthy of consideration, but it entails only pedagogical modifications and does not

focus on the main objective of Islamic legal theory, i.e., the deduction of legal rulings.[11]

Bin Bayyah draws attention to three other claims or projects of renewal of Islamic legal theory that, according to him, constitute a danger for the existence of *sharīʿa* itself. He associates these projects of renewal with the writings of modernist scholars like Muhammad Arkoun (d. 2010), ʿAbd al-Majīd al-Sharafī (b. 1942), and Nasr Abū Zayd (d. 2010).[12] These three claims of renewal are:

1 A call for relying on wisdom and *maṣlaḥa* unrestricted by any regulation of ratiocination (*taʿlīl*) or by any of the instruments used in the application of the legal rulings.[13] According to Bin Bayyah, such an approach undermines the very structure and foundations of *ijtihād*.

2 A call to rely on *maqāṣid* devoid from any *uṣūl* considerations and divested from any concern for the particular textual indicants (*dalāʾil*).[14] Although Bin Bayyah acknowledges that there is some legitimacy to this proposition, nevertheless he argues that the scholars who have endorsed such a view have failed to understand that the scale of Islamic legal theory (*al-mizān al-uṣūlī*) is the only mechanism that guarantees the correct usage and application of the objectives of *sharīʿa* in bringing legal rulings into life. Without it, the *maqāṣid* will remain subjective and non-anchored on solid textual grounds.

3 A call for historicizing and contextualizing the shariatic texts.[15] In Bin Bayyah's view, the final result of this historical-critical method is disconnection from the shariatic texts and the transformation of legitimate considerations, i.e., the historicity of the texts, in general law or established principle for the entire process of understanding the revelatory texts. In short, for Bin Bayyah, these claims of renewal violate the eternal validity of the textual proofs and constitute a jump to the unknown. They represent an escape from the more arduous task of constructing a project of renewal grounded in the texts of *sharīʿa* and able to respond to modern needs.[16]

According to Bin Bayyah, the modernist projects of renewal give undue precedence to purely rational *maṣlaḥa* over the categorical scriptural texts. As such, they fall outside the legitimate boundaries of the

Islamic discursive tradition and do not share in its fundamental commitments to scriptural sources. The result of these types of projects, accordingly, is the "creation of a new legislation, rather than the renewal of *sharīʿa*."[17] Bin Bayyah's criticism of the modernist proposals of renewal is hardly new or unprecedented. It follows, in language and structure, the standard way in which these proposals have been presented and criticized in existing revivalist and centrist (*waṣaṭiyya*) projects of reform, particularly as articulated by Yūsuf al-Qaraḍāwī.[18] In his discussion, Bin Bayyah seems unable or unwilling to critically engage with the modernist projects of reform; their methodology is dismissed without proper analysis. Nevertheless, highlighting their 'errors' allows him to situate his reformist project as a middle way between the approach of those who dismiss specific texts in the name of some higher *maqāṣid* (i.e., modernists) and those who claim to defend the tradition by dismissing the *maqāṣid* in the name of a presupposed faithful adherence to the literal meaning of the texts (i.e., traditionalist-conservatives). In this way, he can present himself as an internal critic who, despite his critical stance towards some aspects of the tradition, aims at reinvigorating that very same tradition instead of dismissing or replacing it with entirely novel conceptual frameworks.[19]

Apart from his distancing from modernist projects of reform, Bin Bayyah does not provide an account of where his project stands in relation to other contemporary trends of renewal of Islamic legal theory.[20] Nevertheless, his discourse of renewal manifests many commonalities with other revivalist and centrist (*wasaṭiyya*) approaches.[21] Bin Bayyah's project shares with the centrist discourse the attempt to construct the *maqāṣid*-based proposal of renewal as a middle path between modernist utilitarianism and traditionalist literalism. He displays a traditionalist stance by rejecting the ability of purely rational *maṣlaḥa/maqāṣid* to override categorical texts or the constants (*thawābit*) of *sharīʿa*. He restricts the latter only to a narrow number of principles and texts, leaving the rest open to *ijtihād* and *maṣlaḥa* considerations. However, he ascribes to *maṣlaḥa/maqāṣid* a greater role in overriding probable texts or the changeable (*mutaghayyirāt*) aspects of *sharīʿa* as well as a central role in those fields towards which *sharīʿa* is silent or neutral.[22] For Bin

Bayyah, Islamic jurisprudence operates mostly within the domain of the probable (*ẓann*) and the changeable aspects of *sharīʿa*; therefore *maṣlaḥa/maqāṣid* occupy a prominent role in the juridical discourse writ large.

Consequently, despite Bin Bayyah's overall traditionalist stance towards the renewal of Islamic legal theory, his substantial law reasoning (*fiqh*) manifests a more modernist-revivalist inclination. In Bin Bayyah's discourse the pragmatic and utilitarian aspects of Islamic law—*maṣlaḥa*, *ḍārūra* (necessity), *rukhṣā* (legal license), *taysīr* (leniency), etc.—occupy a prominent role in the renewal of Islamic law. In this regard, his jurisprudence too is not very dissimilar to that of scholars like al-Qaraḍāwī.[23] In the same vein as revivalist discourse, historicism and contextualism are two key hermeneutical tools through which Bin Bayyah tries to bring perceived problematic aspects of the pre-modern legal tradition in line with modern sensibilities.[24] In a sense, this apparent difference in Bin Bayyah's approach towards legal theory and substantive law might be conceived as an instance that corroborates the scholarly position that ascribes to legal theory only a justificatory role of validating *ex post facto* existing legal positions.[25] Nevertheless, Bin Bayyah's himself does not subscribe to this way of understanding the role of legal theory. He endorses the dominant traditional narrative that conceives of legal theory as the method for legal derivation and a criterion for judging the coherence and validity of legal reasoning. For Bin Bayyah, the central aim of legal theory remains the facilitation of deduction of legal norms. Therefore, a *maqāṣid*-centered renewal of legal theory is presented as crucial for the production of a flexible jurisprudence that will adequately respond to modern exigencies.[26]

Despite his commonalities with the centrist-revivalist discourse, Bin Bayyah's theorization of renewal of Islamic legal theory is more in line with the neo-traditionalist approach. As al-Azami explains, generally neo-traditionalism refers to "a denomination of Sunnism that emphasizes respect for and adherence to one of the four schools of law, the Ash'arī or Māturīdī schools of theology, and valorizes Sufism."[27] In terms of its approach to Islamic law and its renewal, neo-traditionalism presents itself as "opened to more than one school of law for reference on valid rulings and not restricted to one school."[28] In this context, it is the entire

corpus of the legal tradition and not a particular eponym of a *madhhab* or school of law that is presented as the repository of legal authority. The main approach of neo-traditionalism towards the renewal of Islamic Law consists in the creative and renewal-oriented selection (*takhayyur*) and amalgamation (*talfīq*), from the legal tradition, of those legal rulings of the madhhabs that are perceived as most suitable for the modern age. Often this process includes not only the choice between two well-established legal rulings, but also the selection of an outweighed ruling (*marjūh*) over a preponderant one (*rājih*). For many neo-traditionalists, including Bin Bayyah, modern circumstances dictate the need for the adoption of outweighed rulings. This process of preponderance (*tarjīḥ*) should be conducted in light of *maṣlaḥa* and *maqāṣid* considerations. The role of *maqāṣid* in this process is that of providing the necessary regulations (*ḍawābiṭ*) for a sound exercise of preponderance.[29]

In neo-traditionalist terms, Bin Bayyah accepts the inherited conceptual edifice of post-formative Islamic legal theory and affirms its eternal relevance for all times and conditions.[30] He rejects the claim that Islamic legal theory is in a state of irreversible crisis and dismisses calls for a thorough reconsideration of its structure.[31] Bin Bayyah portrays the process of creative drawing on the reservoir of the existing resources of the classical legal tradition as sufficient for addressing modern realities. Therefore, he is generally reluctant to explicitly bypass the madhhabs' well-established legal rulings and the formal procedures of classical legal theory in favor of "creative ijtihad" (*ijtihad inshā'ī*). Instead, in order to bring the needed legal changes and maintain conspicuous links with the legal tradition, he makes recourse mostly to selective *ijtihād* (*ijtihad intiqā'ī*). This aspect also appears prominently in centrist-revivalist discourse, like that of al-Qaraḍāwī.[32] However, unlike the latter, in Bin Bayyah's discourse the *madhhab*s' legal tradition seems to bear a heavier weight. Although both scholars use the aura of tradition as a discursive strategy to legitimize their legal conclusion, nevertheless identification with and general adherence to the *madhhab* tradition is more manifest in Bin Bayyah. In contradistinction, al-Qaraḍāwī manifests a more pronounced *salafī* tendency, that he inherits from the modernist salafism of Riḍā, which encourages the bypassing of the inherited legal tradition

in favor of a new reading of the scriptural sources, informed by the exigencies of the modern age.[33] In many respects, the differences between the discourses of these two scholars reside more in degree and emphasis rather than their nature and methodology.

In the introduction of his treatise on *maqāṣid*, Ibn ʿĀshūr made the case for the establishment of the science of the objective of *sharīʿa* (*ʿilm al-maqāṣid al-sharīʿa*) as independent, in status, from Islamic legal theory.[34] His approach towards *maqāṣid* has been endorsed by may centrist-revivalist scholars (e.g. al-Raysūnī), and constitutes the actual way in which *maqāṣid* are taught in many influential Islamic educational institutions.[35] Bin Bayyah rejects the idea that *maqāṣid* should be considered an independent source of law or conceived as a standalone methodology for rule derivation. Instead, in his discourse *maqāṣid* are subsumed under legal theory and the relation between them is conceived as that between the soul and the body.[36] As we shall see, relying on the Aristotelian theory of causation, Bin Bayyah rejects the reconsideration of the subject-matter (*mādda*) of Islamic legal theory and confines his reform proposal to the form (*ṣūra*) and the role that the *mujtahid* plays in shaping the subject-matter through his work on the form of legal theory. As a result, Bin Bayyah's project of renewal of legal theory is traditionalist in nature and modest in its claims. It consists mainly in the attempt to integrate *maqāṣid* considerations in the formal procedures of Islamic legal theory by demonstrating their centrality and indispensability. In this regard, his main strategy consists in the expansion of the role and scope of *maṣlaḥa/maqāṣid* in Islamic legal theory through a process of new divisions, rearrangement, reorganization, expansion, and restriction of its existing structures. This process of *maqāṣid*-based restructuring and reorganization of existing legal frameworks allows him to carve out a more central role for *maṣlaḥa* and *maqāṣid* in legal theory.[37]

Maṣlaḥa and *Istidlāl*: The History of Islamic Legal Theory as the History of *Maqāṣid*

Among Muslim scholarly circles there is a common narrative according to which *maṣlaḥa* and the *maqāṣid* approach are portrayed as a

phenomenon that emerged late in Islamic legal history and was marginal to the very nature of Islamic legal theory.[38] As Mohammad Hashim Kamali states, "maqāṣid did not receive much attention in the early stages of the development of Islamic legal thought and, as such, they represent rather a later addition to the juristic legacy of the madhāhib."[39] For many critics of the contemporary *maqāṣid* approach, the absence of a theorization of *maṣlaḥa* and *maqāṣid* in the early Muslim generations is evidence of the absence of its legal pedigree, which would be necessary for the establishment of their legitimacy in legal theory. In this context, the fact that the earliest evidence for the technical use of the term *istiṣlāḥ* (public welfare) appeared at the end of the fourth-century *hijrī*, in the writings of Muḥammad b. Aḥmad al-Khwārazmī (d. after 387/997), constitutes a genealogical problem for advocates of *maṣlaḥa* and *maqāṣīd*.[40]

In order to resolve this apparent handicap in the juridical pedigree of *maṣlaḥa* and *maqāṣid*, Bin Bayyah offers a narrative of the early Islamic legal history in which *maqāṣid* are conceptualized as integral parts of the origins of legal theory itself. The grounding of the genealogy of the *maqāṣid* approach in the very foundational period of Islamic legal history is crucial for Bin Bayyah's project of portraying *maqāṣid* as an essential part of legal theory. In order to achieve this goal, he presents the central motivation behind the development of the science of Islamic legal theory as the attempt to strike a balance between the textual sources (*al-naṣṣ*) and inference (*istidlāl*).[41] Linguistically *istidlāl* refers to the search for an indicant (*dalīl*). In the terminological sense, the term has been used in a general and particular meaning.[42] In its general meaning, *istidlāl* refers to seeking evidence from the Qur'an, Sunna, consensus, analogy or other legal sources. In its particular meaning, it is used "to designate any indicator that does not fall under the familiar headings of Qur'ān, Sunna, *Ijmā'*, and analogy."[43] Bin Bayyah uses the term in this latter meaning. For him, *istidlāl* becomes a catch-all term that includes the legal mechanisms and processes that are not directly connected or based on textual considerations, such as public welfare (*istiṣlāḥ*), blocking of the means (*sadd al-dharā'i'*) and juristic preference (*istiḥsān*). Bin Bayyah does not clarify the precise relation between *maqāṣid* and *istidlāl*. However, his discourse on the topic shows that, for him, on the one hand *maqāṣid* are

just an element or part of *istidlāl*, while on the other hand *maqāṣid* constitutes the foundation or the ground through which *istidlāl* mechanisms are regulated or legitimized in legal theory.

The strong relation of *maqāṣid* with *istidlāl* allows Bin Bayyah to trace back the *maqāṣid* discourse to the time of the Companions. In this context, the Prophet's greatest companions, especially the four Rightly Guided Caliphs, systematically considered the *maqāṣid* in their legal reasoning. Abū Bakr's (r. 632-634) decision to consider as apostate and fight the Arab tribes that refused to pay zakat; ʿUmar b. al- Khaṭṭāb's (r. 634-644) refusal to apply the *ḥadd* punishment for theft during the time of famine; or ʿAlī b. Abī Ṭālib's (r. 656–661) refusal to fight the *khawārij* while in a state of war, become read as a concrete manifestation of *maqāṣid* in the *ijtihād* of the Companions. They are proofs of the fact that the Companions used *maqāṣid* reasoning to act in the absence of textual sources or in contradiction with their outward meaning.[44] In Bin Bayyah's view, the Followers (*ṭābiʿūn*) received the *maqāṣid* approach as a natural continuation of the legal heritage from the era of the Companions.[45] He singles out the school of Medina, represented by the seven jurists of Medina, as the school of *maqāṣid*. Quoting Ibn Taymiyya, Bin Bayyah argues that the school of Ahl al-Madīna was renowned for taking into consideration *maqāṣid* and its foundations.[46] The tradition of the school of Ahl al-Madīna culminated with Imam al-Mālik (d. 795) and his legal approach based, among others, on 'public welfare' and 'blocking of the means'. Bin Bayyah quotes the saying of the renowned Mālikī jurist, Abū Bakr b. al-ʿArabī (d. 1148) regarding Imām al-Mālik: "As for *maqāṣid* and *maṣāliḥ,* this is also something in which Imām Mālik was unparalleled, unlike other scholars."[47]

Bin Bayyah continues his construction of the genealogy of the development of *maṣlaḥa* and *maqāṣid* by tracing its developments from the second century *hijrī* until the formation of the Islamic schools of law in the fourth-fifth century.[48] Quoting al-Shāṭibī, he argues that three textual approaches emerged in Islamic legal history in the second-century *hijrī*: 1) a literalist (*ẓāhirī*) approach that did not take into consideration the intention or the objectives of the texts but restricted itself to the apparent meaning of the texts; 2) an esoteric (*bāṭinī*) approach that refused the

apparent meaning of the textual sources and restricted the meanings of the texts only to their internal/esoteric dimensions; and 3) a balanced approach, endorsed by most Muslim legal scholars, that considered both the textual and the extra-textual dimensions of the revelatory sources.[49]

In Bin Bayyah's framework, this third attitude consists in the attempt to strike a balance between texts and inference. Nevertheless, historically speaking, the precise middle path between the two was not easy to determine and it was subject of staunch disagreements between the *madhhab*s. In his view, the Shāfiʿī school of law took a position nearer to the literalist approach, in which textual and linguistic considerations played central importance in the law-finding process. In his *Risāla*, al-Shāfiʿī took a strong stance against the legal notions of juristic preference (*istiḥsān*), blocking of the means (*sadd al-dharā'iʿ*), and (to a certain degree) public welfare (*istiṣlaḥ*).[50] By contrast, the Ḥanafī, Ḥanbalī and Mālikī schools of law inclined more towards inference, emphasizing these legal notions.[51] Bin Bayyah accepts the conventional narrative that considers Imam al-Shāfiʿī as the founder of legal theory and his *Risāla* as the first conscious articulation of Islamic legal theory.[52] As a response to Imām al-Shāfiʿī's rejectionist attitude towards these *istidlāl* mechanisms, the third-century *hijrī* witnessed an intense debate on the legitimacy of *maṣlaha, maqāṣid* and *sadd al-dharā'iʿ*. The result of this controversy was the emergence of various legal strategies to justify these legal mechanisms and connect them with more *uṣūlī* considerations.[53]

The controversies around *istidlāl* mechanisms required the exercise of *ijtihād*. For Bin Bayyah, *maqāṣid* emerged precisely as the necessary legal framework that provided this required means and criteria for regulating (*ḍabṭ*) *istidlāl*.[54] This role makes *maqāṣid* central to *istidlāl* and essential for any project of renewal of Islamic legal theory. The debates that al-Shāfiʿī's position on certain *istidlāl* mechanisms (*istiḥsān, istiṣlāḥ*, etc.) originated, resulted in the acceptance and legitimation of *istidlāl* mechanisms as an integral part of Islamic legal theory. Hence, according to Bin Bayyah, al-Shāfiʿī's discourse in his *Risāla* should be regarded as the beginning of the journey of the *maqāṣīd* school of thought.[55] In this way, the *maqāṣid* approach is integrated in the history of Islamic legal theory itself. Such a reconstruction of the history of *maqāṣid* allows Bin

Bayyah to invoke foundational figures of Islamic legal theory, like Imām al-Shāfiʿī, in favor of his conceptualization of *maqāṣid* and its importance for the renewal of Islamic legal theory.

Through his reconstruction of the genealogy of *maqāṣid*, Bin Bayyah seeks to provide historical corroborations for his particular conceptualization of *maqāṣid* and their importance for the renewal of Islamic legal theory. This endeavor implies a reading of early Islamic legal history in hindsight of later developments and consequently manifests a certain degree of anachronism. For instance, it is true that, as Bin Bayyah suggests, *ijtihād* of the early Muslim generations often reflected an intuitive and underlying *maqāṣid* reasoning that later on became integrated or justified through non-analogical *istidlāl* frameworks, like *istiḥsān*, *istiṣlāḥ* and *sadd al-dharāʾiʿ*. Nevertheless, the emergence of *istidlāl* itself, as a general concept for methods of enquiry separated from *qiyās* that included formal and non-analogical arguments, was a late development (4th-5th century *hijrī*).[56] Moreover, as Hallaq states, all these arguments "existed in the realm of the controversial within the systems of the four schools of law."[57] Hence, although the relationship between text and inference might have been important for the jurist of the formative period of the Islamic law, presenting it as a fundamental feature of Islamic legal theory from its beginning and the main impetus behind the development of Islamic legal theory seems to be historically an overstretch and a backward projection of later legal developments into the early period.

Moreover, while *istidlāl* contains and necessitates, to a certain degree, *maṣlaḥa/maqāṣid* considerations, historically speaking it is textual considerations, rather than *maqāṣid*, that seem to have played a greater role in integrating *istidlāl* mechanisms in the structure of Islamic legal theory. For instance, one important strategy to legitimize and integrate *istiḥsān* in the structure of legal theory has been its rationalization as a form of particularization (*takhṣīṣ*) of the efficient cause (*ʿilla*). Another important strategy has been the presentation of *istiḥsān* as a concealed form of analogy (*qiyās al-khafī*) that on certain occasions, based on juristic considerations, should be preferred over manifest analogy (*qiyās al-jālī*).[58] In this way, *istiḥsān* could be presented not as "the arbitrary opinion of the jurist but the carefully conducted analogy on

the basis of textual evidence and sound methodological principles."[59] In both cases, although *maqāṣid* considerations were perceived as important for the existence of *istidlāl* mechanisms, it was the grounding of *istidlāl* on agreed upon formal textual mechanism like *qiyās* or *ta'līl* rather than *maqāṣid* which proved essential in providing the criteria for regulating (*ḍabṭ*) *istiḥsān*.[60]

In short, Bin Bayyah reconstructs the early history of Islamic legal theory in ways that fit his particular understanding of the role of *maqāṣid* in it. His narrative of the genealogy of *maqāṣid* is indicative of a common feature of the contemporary Islamic discourse, and Islamic legal tradition in general, where modern and new constructs like *fiqh al-maqāṣid* (purposive jurisprudence), *fiqh al-wāqi'* (jurisprudence of reality), *fiqh al-muwāzanāt* (jurisprudence of balance), etc., are often justified by backward-projecting them into the prophetic or foundational period. By conceptualizing *istidlāl* and its relation with the text (*naṣṣ*) as the main impetus behind the development of Islamic legal theory, Bin Bayyah is able to carve out a central role for *maqāṣid*. This discursive strategy allows him to justify the place of *maqāṣid* in the very structure of Islamic legal theory and trace the beginning of the journey of the *maqāṣid* school of thought back to the founder of legal theory himself (al-Shāfi'ī). In this way, Bin Bayyah is able to present *maqāṣid* and classical *usūlī* textual procedures as sharing the same roots and legitimacy.

The Role of *Maqāṣid* in Bin Bayyah's Project of Renewal

In laying out the structure of his project of renewal, Bin Bayyah draws from the Aristotelian theory of causation, namely the distinctions between material, formal, efficient and final causes (*mādda*, *ṣūra*, *fā'il*, *ghāya*).[61] In fact, in his book on the renewal of legal theory, *Ithārāt al-tajdidiyya*, Bin Bayyah gives to legal theory a logical structure organizing it in accordance with the four forms of causation (*al-'illal al-arba'*). In Bin Bayyah's view, these are the only means through which scholars can realize change and provide explanations for their reasoning. The subject-matter (*mādda*) of Islamic legal theory, i.e., "its essence from which the structure of *uṣūl* spring forth and without which its existence is not conceivable,"[62] is not

susceptible to revision or reconsideration. He conceives the subject-matter (*al-mādda*) of Islamic legal theory as constituted by seven fundaments: 1) Qur'an, 2) Sunnah, 3) Arabic language, 4) substantive law (*fiqh*), 5) the legal verdicts (*fatwa*) of the Companions, 6) theology (*'ilm al-kalām*) and 7) Aristotelian logic.[63] He restricts the renewal of legal theory principally to the realm of the form (i.e., the formal causation), especially in its element of *tarkīb* (structuring) and its role in constructing the relationship between the universals and the particulars.

It is in the realm of the formal (*ṣūra*), i.e., "which through its shape makes the matter (*mādda*) responsive towards a specific function,"[64] that most of the renewal of legal theory takes place. In Bin Bayyah's view, any work on the subject-matter is actualized through the effect that the form has on it, and not by negating parts of the matter's constitutive elements. Formal causation is composed of five elements: *tarkīb* (structuring), *tabwīb* (classification), *tartīb* (arrangement), *talqīb* (designation), and *taqrīb* (approximation). It is through reprising these five elements that significant changes in Islamic legal theory can be actualized. The role of *maqāṣid* deliberations appears predominantly in the element of *tarkīb* (structuring) and consists in the assembling or putting together the parts of a compound reality (*ajzā' al-murakkaba*). By this, Bin Bayyah means the construction (*tarkīb*) of the universals from its particulars and vice versa as well as the structuring of two particulars by putting them in relation with each other.

In a broader perspective, Bin Bayyah conceives the role of formal causation (*al-ṣūra*) in the renewal of legal theory as manifested in three principal forms of *ijtihād* that constitute the heart of Islamic legal theory itself. These are:

1. *ijtihād* concerning the linguistic indicators (*ijtihad fī dalālāt al-alfāẓ*) that refers to all the issues related to the Arabic language;
2. *ijtihād* concerning issues related to harm and benefit that refers to *maqāṣid*, in its entirety and details; and
3. *ijtihād* in the verification of the hinge (*taḥqīq al-manāṭ*), which is a type of perpetual *ijtihād* concerned with the application of the shariatic legal rulings to the particular/individual cases encountered in specific contexts.[65]

These three types of *ijtihād* respond respectively to the what, the why, and the how of Islamic law. To each of these forms of *ijtihād*, Bin Bayyah has dedicated a particular study.[66] Although the role of the form (*ṣūra*) is crucial to all the types of *ijtihād* mentioned above, nevertheless the role of *maqāṣid* in the renewal of Islamic legal theory is particularly essential for the second kind of *ijtihād*. Hence, our analysis will be mainly focused on this aspect, which constitutes the second step of inquiry and is more profound and important than *ijtihad* based on linguistic indicators.[67] The third type of *ijtihād*, which revolves around the notion of the verification of the hinge (*taḥqīq al-manāṭ*), constitutes a crucial element of Bin Bayyah's theory of applicative *ijtihād*.

Bin Bayyah conceives of the contribution of *maqāṣid* to Islamic Law predominantly in three aspects, of which our analysis will focus on the two former ones:

1 The actualization (*taf'īl*) of Islamic legal theory in light of the realization of *maqāṣid* in its structure;[68]

2 The selection of the appropriate legal opinions, even if this entails the adoption of an outweighed opinion (*marjūḥ*) over a preponderant one (*rājiḥ*);[69] and

3 The actualization of the theory of *maqāṣid* to develop a comprehensive Islamic philosophy that answers the questions raised by the modern age by relying on the mutual relationship between revelation and reason.[70]

As we will see, Bin Bayyah situates the role of *maqāṣid* in the renewal of Islamic legal theory as crucial for the system of ratiocination (*manẓūmat al-ta'līl*) and the broadening of its role. Within the system of ratiocination, he ascribes to the objectives of *sharī'a* the principal role of enabling the construction of universals (*kulliyyāt*) and preserving the balance between the universals and the particulars.[71] In this context, any process of ratiocination (*ta'līl*) should be proceeded by two preludes (*muqaddima*) that pertain to the domain of *maqāṣid*. These preludes consist in (1) taking *maqāṣid* into consideration, be it universal or particular, original or dependent, the objectives of the Lawgiver or the legally responsible subjects (*mukallifūn*); and (2) taking into consideration the

logicality of *uṣūl* (*mantiqiyyat al-uṣūl*).[72] In the following, we will elaborate further on these two preludes that are central to Bin Bayyah's presentation of the role of *maqāṣid* in the renewal of Islamic legal theory.

The First *Muqaddima*: Considering *Maqāṣid* in the Process of Ratiocination *(Ta'līl)*

According to Bin Bayyah, *maqāṣid* constitute the natural environment for the efficient cause (*'illa*), be it in the case of a universal or a particular *'illa*. Most of the efficient causes are *maqāṣid*, while a few of them do not pertain to the *maqāṣid* domain, like those deductions of the efficient cause through the procedure of co-presence and co-absence (*ṭard wa 'aks*) or sorting and eliminating (*sabr wa taqsīm*). [73] As such *maqāṣid* are crucial for researchers to understand the foundations of the efficient cause. For Bin Bayyah, the actualization of Islamic legal theory in the light of *maqāṣid* serves as a way to expand the capacity of deduction, and as a prelude (*muqaddima*) to *ma'qūl al-naṣṣ*, the same way linguistics (*mabāḥith al-lughawiyya*) serves as a prelude for the signification of expressions (*dalālat al-alfāẓ*). The most important feature of the renewal of Islamic legal theory through *maqāṣid* consists in the latter's ability "to construct universals, while maintaining a balance between the universal and the particular as well as elucidating the order and the sequence [of the objectives], i.e., the ranks and levels of the general objectives on which the particular indicants are based according to their [i.e., *maqāṣid*] different degrees and whether they entail obligation or permissibility."[74] This role of *maqāṣid* in the renewal of Islamic legal theory consists principally in a) the actualization (*taf'īl*) of Islamic legal theory in the light of the realization of *maqāṣid* in its structure and b) taking into account the principle of mutual attraction between the universal and the particulars.[75]

1 *The actualization of Islamic legal theory in the light of maqāṣid*

For Bin Bayyah, actualizing Islamic legal theory by taking into consideration the structure of the *maqāṣid* is necessary to expand the role and scope of four *uṣūlī* circles or fields (*dawā'ir*) that constitute the core of inference (*istidlāl*) and consequently of *maqāṣid* reasoning itself.

These for *uṣūlī* circles are: 1) juristic preference (*istiḥsān*), 2) public welfare (*istiṣlaḥ*), 3) the deduction of legal analogies (*istinbāṭ al-aqyisa*) and 4) taking into consideration the anticipated outcomes (*ma'ālāt*) and means (*al-dharā'i'*) of legal rulings.[76] According to Bin Bayyah, in Islamic legal theory terms, employing or taking into consideration *maqāṣid* in order to bring renewal into these four legal circles means that sometimes *maqāṣid* might take the meaning of a particular, i.e., that of attaching the new case (*far'*) to a particular original case (*aṣl khāṣṣ*) in a particular locus (*maḥall makhṣūṣ*) and this constitute the procedure of *qiyās*. Some other times, the integration of the *maqāṣid* into the operation of Islamic legal theory might signify bringing into existence a legal norm based on a universal, in the cases where no particular original case exists for the issue under analysis. This procedure corresponds to *istiṣlāḥ*. Other times *maqāṣid* considerations might require the exemption of a particular from its established universal based on a specific feature of the particular that requires such an exemption. This aspect represents the *uṣūlī* structure of *istiḥsān*. Lastly, *maqāṣid* deliberations might require changing the outward meaning of a legal ruling in light of the anticipation of its effect. This constitutes the essence of *sadd al-dharā'i'* (blocking of the means).[77]

Here, Bin Bayyah insightfully emphasizes the ways in which *maqāṣid* considerations are intrinsically connected with the above-mentioned *uṣūlī* circles and constitute their basis. The importance of *maqāṣid* for these *uṣūlī* legal tools did not escape the attention of classic legal scholars. However, Bin Bayyah provides an original framework and a contemporary language of how to conceptualize these *uṣūlī* circles in *maqāṣid* terms. Yet he does not provide further explanations of how precisely is the actualization (*taf'īl*) of *maqāṣid* supposed to expand the role and scope of these *uṣūlī* circles beyond that envisaged in the traditional *uṣūlī* discourse. At this point his discourse remains theoretical and in need of concrete substantiations. Nevertheless, for Bin Bayyah, these four *uṣūlī* circles constitute the area of *maqāṣid* within Islamic legal theory, of which the most important is *istiḥsān*. The latter permits "the particularization (*takhṣīṣ*) of the general ('āmm) legal texts and the qualifying of the unqualified

(*taqyīd al-muṭlaq*)."[78] In the Maliki *madhhab*, it refers to "opting for a particular *maṣlaḥa* in lieu of a general indicant (*dalīl al-kullī*)."[79] It refers to giving precedence to unattested *istidlāl* over an analogy in cases where the strict application of an analogy brings to the non-realization of a *maṣlaḥa* and the acquisition of harm (*mafsad*). As Abū Bakr Ibn ʿArabī explains, *istiḥsān* consists in "giving preference to the relinquishment of the requirements of textual indicant (*dalīl*) via the path of exception (*istithnāʾ*) and legal license (*tarkhīṣ*). This, as a consequence of the existence of some opposition (*muʿāraḍa*) by which the *dalīl* is opposed in some of its requirements."[80]

In this context, evidence can be opposed by giving preference to customs, *maṣlaḥa*, consensus, legal license, or lifting hardship. Bin Bayyah argues that need (*hāja*) also can specify a general text, especially when the generality of the text is weak with regard to the specific issue under analysis. Here, the weakness refers to the situation when a particular issue that is particularized through *istiḥsān* pertains to a rare case that cannot be included in the general ruling.[81] A concrete example of this is Imām Malik's permission for menstruating women to read from the *muṣḥaf* of the Qur'ān despite the existence of a general text that prohibits its reading by those in a state of major impurity (*janāba*). Imam Malik's legal verdicts consisted of the particularization of the general text. He based his legal position on women's need (*hāja*) to preserve the memorization of the Qur'ān. This is also facilitated by the fact that the generality of the text that prohibits such an act is weak with regards to the issue at hand because the general text speaks of major impurity (*janāba*) rather than menstruation.[82] Thus, the exercise of *istiḥsān* relies on the understanding of *maqāṣid* and the thorough contextual circumstances related with particular cases. For Bin Bayyah, in this context, one of the essential functions of *maqāṣid* is the construction of universals (*kulliyāt*) or concepts (*mafāhīm*) necessary for the proper application of the four *uṣūlī* circles. In other words, *maqāṣid* can serve as the best guide in the formulation of universals and particulars necessary for the proper actualization of the four *uṣūlī* circles to respond adequately to contemporary realities.[83]

2 *The principle of mutual attraction between the universal and particulars*
Bin Bayyah argues that the *maqāṣid* in all their diversity constitute the appropriate environment for the construction of concepts (*mafāhim*), universal or particular, that have significant repercussion for jurisprudence and the Islamic legal theory framework of dealing with scriptural texts. Al-Shāṭibī stressed the importance of a proper balance in which the universals (*kulliyyāt*), i.e., the objectives of *sharīʿa*, and the particulars (*juz'iyyāt*), i.e., the particular textual sources, are put in a mutual and symbiotic relationship with each other. For al-Shāṭibī, as reason requires, the particulars are derived from the universals that should be considered during the analysis of specific textual indicators from the revelatory sources. However, the universals themselves are made known by inducing them from the particulars and necessitate them for their legitimacy and existence. Therefore, "it is impossible for the particular to dispense with the universals. Consequently, whoever holds, for example, to the particular aspect of a text and rejects its universal [aspect] is mistaken, and whoever holds to a particular rejecting the universal is wrong. Similar is the case with whoever holds to a universal rejecting the particular."[84] For al-Shāṭibī, when a general rule (*qāʿida kulliyya*) is established by induction, and a text, in its particular aspect, contradicts it, harmonization between the two is necessary. According to him, the *sharīʿa* did not state this particular except by preserving at the same time those general rules. Therefore, it is not possible, in this case, to violate the general rule by canceling what is considered by *sharīʿa*. It is not possible to consider the universal and cancel the particular.[85]

However, according to Bin Bayyah, al-Shāṭibī seems to contradict himself elsewhere, stating that in the case of a contradiction between a general rule and a particular text it is necessary to preserve order and give precedence to the first. This because no system in the world is disturbed by the unsettling of the particular, unlike if precedence is given to the particular.[86] Whereas, for Bin Bayyah, when a particular and a universal clash with each other, it is obligatory for the *mujtahid* to reconcile them, and in case this is not possible, then neither the universal nor the particular should be preferred over the other

in an unqualified way. The reason for this resides in the possibility that the *mujtahid* might realize in the particular a specific meaning that makes it stand alone from the universal and take another legal ruling different from that dictated by the universal under which this particular was originally subsumed. For Bin Bayyah, this is the heart of *istiḥsān* (juristic preference), i.e., excluding a particular from the universal. Blocking the means (*sadd al-dharā'i'*) constitutes another case where, in the light of the anticipated effects, the particular takes the place of a universal, and the legal norm is given following the dictates of the particular. Other times, as in the case of unattested *maṣlaḥa*, the particular is divested of all meanings and is absorbed and controlled by the universal.[87]

For Bin Bayyah, all these four *uṣūlī* legal mechanisms are the domain of *maqāṣīd*, and by nature, they exist in order to take into consideration and respond to new occurrences or novel social contingent realities. The present condition might require the abandonment of a preponderant (*rājiḥ*) legal opinion in favor of an outweighed one (*marjūḥ*) as a consequence of the occurrence of matters of general necessity (*'umūm al-balwa*), hardship, the non-realization of a *maṣlaḥa*, and the possibility of acquisition of harm.[88] In traditional Mālikī jurisprudence, the appropriation of outweighed opinions (*marjūḥ*) has been legitimized under the notion of *juryān al-'amal*.[89] In the Islamic West, Maliki scholars reviewed the preponderant opinions of the *madhhab* in the light of *juryān al-'amal*. Each region followed a specific *'amal* different from one another.[90] In the Ḥanafī jurisprudence, the same function is played by the notion of deterioration of times (*fasād al-zamān*). Based on this concept, later Ḥanafis allowed giving salaries to Qur'an teachers and prohibited a woman from traveling even if accompanied by her husband.[91] For Bin Bayyah, the realization of *maqāṣid* in modern times might require the adoption of a forsaken opinion (*mahjūra*) as long it is correctly attributed to early authorities, it is narrated from a trustworthy narrator, and need calls for it.[92]

For instance, against the classical legal ruling, contemporary Muslim scholars have permitted the throwing of pebbles in Muzdalifa

before the sun's zenith. The appropriation of such outweighed opinion (*marjūḥ*) is based on the fatwa of some early legal authorities. It relies on the *maṣlaḥa* of avoiding overcrowding and fatalities of human life that occur nowadays during the fulfillment of this particular pilgrimage ritual. In Bin Bayyah's view, it is precisely the instrument of *maqāṣid* that guarantees the correct understanding of the new realities and the sound legal framework that will legitimize the adoption of an outweighed opinion instead of a well-established preponderant one.[93] Being an incubator of the generation of universals and concepts through which the new challenges or crises can be adequately tackled, in his view, the *maqāṣid* fulfill the crucial role of providing Islamic legal theory with the necessary legal framework and flexibility to be relevant and respond to new social contingent realities as well as to serve as a bridge between the everchanging reality and the scriptural text.[94] For Bin Bayyah, the use of *maqāṣid* in favor of the appropriation of outweighed opinions should be based on clear *uṣūlī* regulations (*ḍawābiṭ*). This will provide the legal procedure with the necessary *uṣūlī* rigor. In this context, Bin Bayyah offers eight such rules:

1 Ascertaining the correct verification of the original objective (*al-maqṣad al-aṣlī*) for which the legal norm has been legislated. The process of the verification of the objective is necessary for the realization of ratiocination (*ta'līl*).

2 Ensuring that the objective (*maqṣad*) is a characteristic which is evident and inherently determinate (*waṣf ẓāhir munḍabiṭ*) for the *ta'līl* to be possible.

3 Determining the category of the objective, i.e., does the objective in question fall under the category of necessity or that of need, is it an original or a dependent objective?

4 Examining the particular texts (*al-nuṣūṣ al-juz'iyya*) that are the foundations of the legal ruling (*ḥukm*) to confirm the presence, or not, of the ruling in it so that the scholar can adequately deal with it in the cases where an inevitable necessity or an urgent need goes against the explicit legal norm contained in the particular texts.

5 Understanding if the inferred objective (*al-maqṣad al-mu'allal*) is textually expressed (*manṣūṣ*) or is deduced (*mustanbiṭ*). In the first

case, the absence of the objective necessitates the absence of the ruling, whereas in the second case, it does not, but it might serve as a particularization.

6 The inferred objective (*maqṣad mu'allal*) should not be rejected by a defective impediment like working with the opposite of the objective.

7 Guaranteeing that a specific *maqāṣid* is not opposed by another one that has priority over it.

8 Confirming that the identified *maqāṣid* is not the locus (*maḥall*) of a ruling that is canceled by textual evidence, consensus, or analogy.[95]

For Bin Bayyah these rules guarantee the correct usage of *maqāṣid* in the law-finding process. He presents them as sufficient to provide the utilization of the objectives of *sharī'a* with the necessary legal methodological rigor and undo the negative image that the *maṣlaḥa* and the *maqāṣid* approach enjoys in some Islamic scholarly circles as being inherently versatile, unregulated, and subjective. Although Bin Bayyah does not delve into the mechanics or the detailed analysis of the above-mentioned rules, nevertheless he presents them as crucial for the process of preferring an outweighed opinion over the preponderant one.[96]

The Second *Muqaddima*: Syllogism and the Broadening of the System of Ratiocination

The second *muqaddima* consists in taking into consideration the logicality of Islamic legal theory (*manṭiqiyyat al-uṣūl*), which explains the conceptions (*taṣawrāt*) acquired through explanation (*qawl al-shāriḥ*) in order to reach the judgments (*taṣdīqāt*) through the two types of proofs, textual and rational.[97] In stressing the logicality of Islamic legal theory, Bin Bayyah aims to reject the call to disassociate Islamic legal theory from logic (*manṭiq*). For this, he presents syllogistic analogy as an integral part of Islamic legal theory and highlights the importance of logical demonstration (*burhān*) for it. He presents the system of ratiocination (*ta'līl*) as composed of three types of analogies: 1) syllogistic analogy (*qiyās al-shumūlī*); 2) inductive analogy (*qiyās al-istiqrā'ī*); and 3) juristic analogy (*qiyās al-tamthīlī*). In other words, the *uṣūlī* proofs fall back on

either a universal (rational or textual) from which the particulars are derived (syllogistic analogy); induced universal deduced from the particulars (inductive analogy); or a particular deduced from another particular (juristic analogy).[98] Therefore, for Bin Bayyah, the second *muqaddima* "is necessary to build the foundations of inference (*istidlāl*) and facilitate the ways for deduction which is the structure of the edifice of Islamic legal theory that frames its various issues."[99] Syllogistic analogy is crucial for the sound process of inference, for structuring its rules (*qawāʿid*) and arranging its proofs (*burhān*). It plays an important role in creating or refining concepts and determining the contents of legal reasoning to build a new framework, test the readiness of old frameworks, or produce frameworks new in types but old in the genus.[100]

In his discussion on the logicality of Islamic legal theory and the importance of syllogistic analogy for its structure, Bin Bayyah provides a summary of the debates of classical Muslim scholars such as al-Ghazālī (d. 1111), Ibn Rushd (d. 1198), Ibn Taymiyya (1328), and Najm al-Dīn al-Ṭūfī (1316). For Bin Bayyah, the disagreement between scholars on this issue revolved around three elements: 1) terminology; 2) the epistemic status of various types of analogy (syllogistic and juristic); and 3) the possibility of conversion of legal analogy into a syllogism.[101]

Regarding the first element, Bin Bayyah argues that both kinds of analogy can be constructed from textual sources. The terminology used in the Islamic sciences is not scriptural. Therefore, the terminology used to describe both juristic and syllogistic analogy cannot be considered non-Islamic. Regarding the second element, i.e., the epistemic status of various analogies, Bin Bayyah discusses al-Ghazālī's argument that juristic analogy leads only to probability (*ẓann*), whereas syllogistic analogy, properly structured, leads to certainty (*yaqīn*) and definitive knowledge. Hence, the juristic analogy cannot be used in rational matters (*ʿaqliyyāt*).[102] In contrast, Ibn Taymiyya challenged the epistemic status of syllogism. Based on a nominalist view, he rejected the idea of universal premises. He argued that "a complete induction of all particulars in the external world is …impossible, and thus cannot lead to a truly universal premiss or to certitude."[103] For him, both types of analogies can lead to certainty. It is not the form but the subject-matter (*mādda*) of the

prepositions that determines the epistemic value of the conclusions. For Ibn Taymiyya, "both analogy and the syllogism yield certitude when their subject-matter is veridical, and they result in mere probability when their subject-matter is uncertain."[104] Therefore, analogical reasoning can be used also in rational matters (*'aqliyyāt*).

Regarding the third element, i.e., the possibility of conversion of legal analogy into the form of a syllogism, Bin Bayyah draws from al-Ṭūfī's attempt to mediate between al-Ghazālī and Ibn Taymiyya. In line with al-Ṭūfī, he argues that juristic analogy falls back on syllogistic analogy composed of two prepositions and one conclusion. For example, the jurist's statement "*nabīdh* (date wine) is intoxicating, so it is forbidden like wine" summarizes the syllogistic construction "Wine is intoxicating, and every intoxicant is prohibited." Syllogistic analogy is composed by two prepositions and one conclusion. In terms of subject and predicate that constitute it, syllogistic analogy is composed of six parts and takes the following form:

[S] Every intoxicant is [P] prohibited (*ḥarām*) ⟶ Major premise (universal)
[S] *Nabīdh* is an [P] intoxicant ⟶ Minor premise (Particular)
[S] *Nabīdh* is [P] prohibited ⟶ Conclusion

For al-Ṭūfī, like syllogistic analogy, the juristic analogy is essentially composed of six parts, but often the middle term is omitted—thus resulting in a structure composed of four parts as in the case of the expression "[s] *Nabīdh* is [p] intoxicant. Therefore, [s] it is [p] *ḥarām*".[105] In this way, for al-Ṭūfī, juristic analogy falls back to syllogistic analogy.

In western scholarship, formal logic is usually portrayed as a latecomer in Islamic legal theory.[106] Al-Ghazalī was instrumental in according to Aristotelian logic its acceptability and incorporating it into legal theory.[107] Nevertheless, Bin Bayyah argues that elements of the Aristotelian logic in legal theory can be traced back to the second century *hijrī*. He claims that from the second century Muslim scholars integrated logical definitions and theological terminology in their legal discourse. Bin Bayyah does not provide further details for his claim, but considers it

sufficiently established so as to render Aristotelian logic a fundament of legal theory and a source from which the principles of Islamic legal theory are derived.[108] Despite the attention allocated to the relevance of syllogistic analogies to legal theory, Bin Bayyah writes that this topic has more relevance for theology than legal theory. In practical terms, the role of syllogistic analogy in legal theory is confined to the regulation (*ḍabṭ*) of some textual particulars to facilitate, in this way, the process of deduction.[109] Despite this, Bin Bayyah portrays calls to excise Aristotelian logic from legal theory as proceeding at "the expense of the correct understanding and the deep comprehension of the philosophy of Islamic legal theory, which affects the renewal and origination of legal rulings."[110] He expresses the importance of the relation between logic, *maqāṣid*, and Islamic legal theory by stating that comprehensive renewal consists in "planting the tree of ratiocination (*ta'līl*) in the soil of *maqāṣid* watered by logic."[111]

An important discursive step undertaken by Bin Bayyah consists in the expansion of the system of ratiocination beyond the three abovementioned types of analogies (syllogistic/inductive/ juristic) by including in it formal arguments like indicative analogy (*qiyās al-dalāla*), coexclusive analogy (*qiyās al-aks*), and that of similarity (*qiyās al-shibh*).[112] He also presents the central elements of *ijtihād* regarding the efficient cause (*'illa*)—i.e., the verification of the hinge (*tahqīq al-manāṭ*), the extraction of the hinge (*takhrīj al-manāṭ*) and determination of the hinge (*tanqīḥ al-manāṭ*)—as integral parts of the system of ratiocination.[113] Historically, the introduction of formal arguments in the structure of Islamic legal theory, particularly under the heading of *istidlāl*, was a later phenomenon (4th/10th and 5th /11th century)[114]. Their inclusion as integral part of *istidlāl* and the system of ratiocination was indebted to the appropriation of logic and dialectics in Islamic legal theory. As Hallaq states "At first, particularly during the sixth/twelfth century, it was in the introductory pages of those *uṣūl* works which admitted the Greek logical element that such arguments appeared."[115] For Bin Bayyah these non-*qiyās* arguments allow the jurists to draw on a wider reservoir of legal mechanisms to respond to the new occurrences, in cases where a strict application of juristic analogy yields unwanted consequences. They demonstrate the importance of logic and dialectic arguments for Islamic legal theory and *ijtihād*.

Bin Bayyah presents the verification of the hinge as particularly important for the system of *ta'lil*. In its essence, it consists in "applying the general principle to its individual cases" or ascertaining that "a *ratio legis* found in the original case (and agreed upon by scholars) also exists in a new case under examination."[116] As such, this legal mechanism is essential for the correct application of legal ruling in concrete cases. It requires a profound knowledge of both the Islamic legal rulings and the particular circumstances surrounding the locus of the legal rulings (*maḥall al-ḥukm*). Being an incubator of the universals, *maqāṣid* play a pivotal role in the realization of the verification of the hinge and in devising the correct juridical response to new realities. As Bin Bayyah states, "The objectives of *sharī'a* take into account reality and deal with the new occurrences because they are a bridge and a path of passage between the changing reality and the inferred text (*naṣṣ mu'allal*)."[117]

In Bin Bayyah's discourse, the expansion of the system of ratiocination carves out an important role for *maqāṣid*, especially for the *ijtihād* based on unattested *maṣlaḥa* or unattested suitability (*al-munāsib al-mursala*). Both types constitute a form of ratiocination by universals (*kullī*). The former has been used particularly by Imam Mālik on issues pertaining to the penitentiary and discretionary punishments. It is based on his stance towards unattested *maṣlaḥa* that it is said that Imām Mālik permitted the extraction of forced confessions from those accused of crimes. Although in the Mālikī *madhhab*, such a position has been criticized, nevertheless many classical scholars, like Imam al-Ghazālī, have portrayed it as a legitimate form of *ijtihād* and rational investigation.[118] The unattested suitability consists of the attachment to the mere *maṣlaḥa* without any attestation from a specific textual foundation. In this case, it is as if *maṣlaḥa* has become a special effective cause (*'illa*). Strictly speaking, this form of *ijtihād* cannot be considered a juridical analogy because it does not consist in carrying a hidden particular to a more manifest particular as a consequence of a shared effective cause between the two. In the case of an *ijtihād* by unattested *maṣlaḥa* or suitability, we face a form of *ta'līl* consisting in the deduction of a particular from a universal in accordance with specific conditions.[119] In this way, for Bin Bayyah, any time the strict application of a juristic analogy leads to

over-stringent conclusions, the *mujtahid* can use the *istidlāl* by *maṣlaḥa* and *munāsaba* or other forms of *istidlāl* (like *qiyās dalāla*, *aks*, and *shibh*) as an exit way from the narrow confines of *qiyās* to the broader area of *maqāṣid* and interpretation.[120]

The Inseparability of *Maqāṣid* from Legal Theory: *Maqāṣid* as the Heart of *Uṣūl al-Fiqh*

As we have seen, for Bin Bayyah, *maqāṣid* and legal theory are inextricably connected. *Maqāṣid* operate within the *uṣūlī* mechanism of ratiocination, understood in a broad sense, and represent a type of *ijtihād* that concerns itself with the identification of the reasons why specific legal injunctions have been established. For Bin Bayyah, without the *maqāṣid*, Islamic legal theory is deficient whereas *maqāṣid* without Islamic legal theory considerations are ineffective or fruitless.[121] In Bin Bayyah's view, often scholars tend to negate the importance of *maqāṣid* for Islamic legal theory or conceive *maqāṣid* as a higher form of law-making that is self-subsistent and independent from Islamic legal theory. Bin Bayyah rejects categorically the idea that *maqāṣid* can exist and operate independently from Islamic legal theory.[122] He argues that not only are *maqāṣid* embedded in the very fabric of Islamic legal methodology but that they constitute its heart. For him, the relation of *maqāṣid* with Islamic legal theory resembles that of the spirit with the body. *Maqāṣid* are Islamic legal theory itself and its inner dimension.[123] The actualization of Islamic legal theory in the light of *maqāṣid* implies the importance of the objectives of *sharīʿa* for Islamic legal theory in its entirety. As we mentioned earlier, Bin Bayyah does not restrict the role of *maqāṣid* in Islamic legal theory only to the framework of the system of ratiocination, but extends it to all its chapters.

As an illustration, Bin Bayyah presents more than thirty ways in which *maqāṣid* are blended into the texture of Islamic legal theory and are necessary for its sound functioning. He claims that these ways that demonstrate the way *maqāṣid* constitute the essence of legal theory are presented for the first time and constitute his particular contribution to the debate. We will recount here only a representative number of them:[124]

1 *The particularization by a maqāṣid of a general (ʿāmm) text.* This is the case with Imam Mālik's legal ruling that exempts the menstruating woman from the general prohibition of touching and reading from the Qur'an while in a state of major impurity (*janāba*). The exception of this particular case from the general prohibition is based on juristic preference and the *maṣlaḥa* reasoning that the strict application of the original legal ruling would render difficult for women the memorization and remembrance of the Qur'an.

2 *The relinquishment (al-ʿudūl) of the requirement of a particular text (naṣṣ khāṣṣ) as a consequence of its clashing with a legal fundament or maxim.* Such is the case with ʿĀ'isha's refusal of Ibn ʿUmar's report from the Prophet which states that a deceased person will be punished in the grave as a consequence of people weeping for his/her death. ʿĀʿisha refused this authentic report based on an established *maqāṣid* foundation deducted from the Qur'anic verse: "No bearer of burdens will bear the burden of another" (Q. 53:38). Also, sometimes the requirement of a particular text can be relinquished to favor a higher legal objective *(maqṣad).* For example, ʿUmar prohibited applying the punishment of expulsion, foreseen for the virgin adulterer, despite a clear prophetic text on this regard. His legal judgment relied on the reasoning that the adulterer's expulsion could bring his/her to join the enemies' ranks. In this case, the particular text clashes with the higher *maṣlaḥa* of keeping people within the fold of Islam.

3 *The elucidation of an ambiguous expression (mujmal) through a maqṣadī meaning.* For example, the Ḥanafis have understood the ambiguous Qur'anic term *kurū'* as referring to menstruation. This, based on the understanding that the waiting period for a woman (*ʿidda*) has been legislated to ensure that the woman is not pregnant and menstruation is a sign that confirms this fact.

4 *The relinquishment of a manifest text based on a maqāṣid indication* and its transformation in the fundament of the interpretation of the manifest text. For example, the Ḥanafīs and the Mālikīs have interpreted the word "*mutabāyiʿān*" of the hadith: "The two contracting parties (*mutabāyiʿān*) are free to rescind [their agreement] as long as they have not departed from each-other [i.e., from the contracting session]" to mean the bargaining (*mutasāwimīn*) parties. They have

departed from the manifest meaning of the word *mutabāyiʿān* (two contracting parties in a sale) in favor of the outweighed meaning (*marjūḥ*) of *mutasāwimīn* (the two bargaining parties) because in their opinion in a financial transaction, the objective (*maqṣad*) is to achieve precision (*inḍibāṭ*) and it is impossible to define or be precise when a sitting session starts and finishes.

5 *Exercising preponderance between two general texts (ʿumūmayn) in the light of a maqṣād* that consists in the discernment of an efficient cause in one of the general texts and the absence of it in the other. For example, most Muslim scholars have given priority to the *hadīth*: "Kill whoever changes religion" over the Prophetic report that prohibits killing women. The reason offered for this position is that the first text contains the efficient cause (i.e., the apostate is killed because he/she changed religion), whereas the second text does not state or contain an efficient cause. Therefore, the prohibition of killing women in the second text has been interpreted as applying to women's killing on the battlefield.

6 *The origination of a legal ruling (iḥdāth al-ḥukm) about which there is no considered suitability (munāsaba muʿtabara*). This is known as unattested suitability that falls back to the unattested *maṣlaḥa.* An illustration of this is the creation and establishment of the prison system by the caliph ʿUmar b. ʿAbd al-ʿAzīz (r. 717–720) as deterrence for criminals.

7 *Relying on the objectives of sharīʿa to preserve the blocking of the means (al-dharāʿi') and the anticipation (al-maʾālāt) of outcomes.* It is in this context that the Ḥanbalīs and the Mālikīs have prohibited the selling of specimen based on the possibility that this method can be used to circumvent usury. The Ḥanbalī and the Mālikī scholars have understood the objective of the Lawgiver in prohibiting usury as that of prohibiting undo increase *(al-ziyāda)* and whatever leads to it.

8 *The peculiarity of some of the legal injunctions specific only to the Prophet.* For example, the Prophet avoided praying *tarāwīḥ* with the congregation, fearing that this would become an obligation. The efficient cause behind this prophetic practice is the objective *(maqṣad)* in itself and constitutes an argument that this practice was specific only for the Prophet's time.

9 *The implication of correspondence (mafhūm al-muwāfaqa), which sometimes is called faḥwā al-khiṭāb and vacillates between analogy (qiyās) and verbal indicant (dalīl lafẓī).* An example of this is the Qur'anic verse: "Say not to them a word of contempt" (Q. 17:23). What is meant by the verse is not to strike *(ḍarb)* the parent given that one of the intentions *(qaṣd)* of *sharīʿa* is to order the children to show respect to their parent, which excludes any form of harm toward the parent. Here maqāṣid has been used to extract a legal ruling based on the implication of correspondence *(mafhum al-muwāfaqa).*

10 *Maqāṣid and their relevance for the qualification of the unqualified* (*taqyīd al-muṭlaq*). For Bin Bayyah, the searching for meaning is what is intended by the theory of the objectives of *sharīʿa*, and what follows is one concrete application of it. In the Qur'an, one of the expiations *(kaffāra)* for a false oath or *ẓihār* consists in the freeing of a slave. The expiation for an unintentional killing is also freeing of a slave, but with the additional qualification that the slave should be Muslim. The Ḥanafīs do not accept this qualification and have argued that, in this case, the objective of *sharīʿa* is to distinguish between two kinds of *kaffāra*, based on the different scale of the legal injunction on killing and that of oaths and *ẓihār*. In comparison, most scholars accepted the qualification of the unqualified texts and required that both in the case of oaths and *ẓihār*, the freed slave should be a believer. In their opinion, in this case, the objective of *shārīʿa* is to encourage the freeing of Muslim slaves. In Bin Bayyah's opinion, both cases are based on a different evaluation of the *maqāṣid* that stand behind the legal rulings.

For Bin Bayyah, these examples show that *maqāṣid* are the heart of Islamic legal theory. The interconnections between *maqāṣid* and Islamic legal theory demonstrate the inseparability and the mutual relation between these two domains of Islamic law. The ways articulated by Bin Bayyah are indeed a strong argument for the intermingling of *maqāṣid* with Islamic legal theory, and Bin Bayyah has done a tremendous service to the debate on this issue by proposing and articulating them. The cases mentioned by Bin Bayyah demonstrate the insufficiency of strictly linguistic or textual considerations in understanding the correct legal

ruling for particular cases. They constitute a strong case for the need of *maqāṣid* deliberation in particular cases of Islamic legal theory analysis. Nevertheless, a closer look at the examples presented shows that the invocation of *maqāṣid* considerations comes into play only when strictly *uṣūl* deliberations fail to provide a sound legal outcome. The linguistic and textual considerations appear to still be the central *uṣūlī* way to arrive at the correct deduction of legal norms from textual sources. The *maqāṣid* factor, albeit part of Islamic legal theory, seems still an auxiliary dimension mobilized to provide legal clarity for cases whose meaning cannot be grasped by strictly *uṣūl* analysis.

Another seemingly problematic element is the fact that the exercise of *maqāṣīd* deliberation, in the above-mentioned cases, seems to be left to the rational discretion and subjective evaluation of the *mujtahid*. What are the criteria or rules that stipulate the cases when a general (*ʿāmm*) text is particularized (*yukhaṣṣiṣ*) by a *maqāṣid*; an ambiguous expression is elucidated through a *maqṣad* meaning; or a manifest text is relinquished based on a *maqāṣid* indication? When is a *maqāṣid* consideration regarded as necessary for the sound understanding of a legal text? What is the correct method of applying the *maqāṣid* deliberations in such cases? What are the criteria that determine when a *maqāṣiḍ* method has been applied correctly, or not, in case of a disagreement between scholars? For the most part, the introduction of *maqāṣīd* element to resolve the difficulties encountered in particular legal situations is the fruit of the legal intuition and acumen of the mujtahid. Despite their importance for the legal analysis of the issues in question, it seems that generally the *maqāṣid* elements, present in the cases mentioned by Bin Bayyah, lack clear-cut rules of procedure that will guarantee them the perceived objectivity, predictability, and stability claimed by the methodology of Islamic legal theory.

Moreover, most of the cases presented by Bin Bayyah are taken from the traditional disagreement (*ikhtilāf*) genre.[125] A closer look at the way these cases appear in the *ikhtilāf* literature shows that that *maqāṣid* do not represent the only available way to resolve these apparently problematic cases. Even in the instances where *maqāṣid* reasoning is used it is not considered final and decisive by everyone.[126]

Often conventional linguistic and textual *uṣūlī* reasoning are invoked to resolve the same problematic cases, mentioned by Bin Bayyah, without resorting to *maqāṣid*. For instance, regarding the third way presented by Bin Bayyah, the Mālikis have argued that although the singular *kur'* is an ambiguous (*mujmal*) term and denotes either purity or menstruation, nevertheless this word takes two plurals. The first is *aqrā'* and refers to menstruation, whereas the second is *kurū'* and refers to purity. The plural used in the Qur'ān is *kurū'*. Hence the term refers necessarily to the period of purity and not menstruation. Here the Malikis have rejected the *maqāṣid* reasoning of their opponents and have resolved the issue by making recourse to *uṣūlī* linguistic analysis. Moreover, in the fourth way mentioned above, Bin Bayyah argues that, based on *maqāṣid* considerations, the Ḥanafīs and the Mālikīs have interpreted the word *mutabāyi'ān* (the two contracting parties) to mean *mutasāwimīn* (the bargaining parties). This based on the *maqāṣid* reasoning that the objective of every contractual session is precision. However, the Ḥanafīs and the Mālikīs have supported their stance on this issue by relying also on a particular feature of the Arabic language where sometimes the name for something is denoted by the thing that accompanies it. For this reason, the Prophetic hadith mentions *mutabāyi'ān* to mean *mutasāwimīn* because agreement/contract follows almost always the bargaining process.[127]

As we can see, in both the abovementioned cases, instead of *maqāṣid* reasoning, various Islamic schools of law have relied on traditional *uṣūlī* linguistic mechanisms to defend their position. Although the same legal rulings have been justified through *maqāṣid* deliberations, as Bin Bayyah suggests, they have also been explained by relying on textual and linguistic *uṣūlī* mechanisms. The ways presented by Bin Bayyah show how *maqāṣid* can be an integral part of the structure of Islamic legal theory. However, they seem to fall short in demonstrating that *maqāṣid* are Islamic legal theory itself, or its heart. At its best, the examples or the ways presented by Bin Bayyah demonstrate that in certain occasions, *maqāṣid* considerations are crucial for the sound understanding of legal rulings; but this does not necessarily mean that *maqāṣid* are always conclusive or more profound that textual and linguistic analysis. Bin

Bayyah's claim that the above-mentioned cases are a proof that *maqāṣīd* are the heart of *uṣūl* and that they are to *uṣūl* like the soul to the body now reads as overstated.

Conclusion

Bin Bayyah is overall successful in demonstrating how *maqāṣid* are interwoven in the structure of legal theory and relevant for its renewal. The discursive strategies adopted by him to ground his reform proposal on solid *uṣūlī* terrain are valuable and constitute a good starting point for further elaborations. In short, Bin Bayyah has articulated a constructive framework to envisage the relationship between *maqāṣid* and Islamic legal theory. His main strategy in showing the relevance of *maqāṣid* for the renewal of legal theory consists in the *maqāṣid*-based reorganization of existing legal frameworks and the expansion of the role and importance of *maqāṣid* for the system of ratiocination, especially *istidlāl*. Overall his project remains neo-traditionalist in nature: mostly focused on proving the inseparability from and the importance of *maqāṣid* for classic legal theory, rather than the comprehensive modern re-theorization of *maqāṣid*, such as undertaken by Ibn ʿAshūr. Hence, for the most part, his discourse on *maqāṣid* remains conventional and his project of the renewal of legal theory is mainly restricted to the reorganization, revision, or adjustment of some existing *uṣūlī* tools and legal frameworks. Bin Bayyah tries to make the case that *maqāsid* are not only important for classic legal theory but that, in reality, they are the heart of legal theory itself. As we saw, despite his original contribution in this regard, he falls short in convincingly demonstrating this point. Bin Bayyah's conservative approach towards the renewal of legal theory seems at variance with his call for the need for a thorough reconsideration of many traditional legal rulings as a consequence of the epochal material and epistemic shifts brought by modernity. In this context, his substantial legal reasoning (*fiqh*) appears to more faithfully reflect this sense of urgency for the reconsideration of the inherited legal tradition than what transpires from his cautious and restrictive model of renewal of legal theory.

Endnotes

1 See Nathan J. Brown, "Shari'a and State in the Modern Muslim Middle East," *International Journal of Middle East Studies* 29, no. 3 (1997): 359-376; Wael B. Hallaq, *Shari'a, Theory and Practice* (Cambridge: Cambridge University Press, 2009), 255-556; and Aharon Layish, "Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement," *Islamic Law and Society* 21, no. 3 (2014): 276-307.

2 See Sherman Jackson, "Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law's *Maqāṣid al-Shari'ah* in the Modern World," *Michigan State Law Review* 2006: 1469-1486; Mohammad Hashim Kamali, "Issues in Legal Theory of Uṣūl and Prospects for Reform," *Islamic Studies* 40, no. 1 (2001): 5-23.

3 See Aḥmad Raysūnī, *Tajdīd al-uṣūlī: nahw' siyāgha tajdīdiyya lī 'ilm uṣūl al-fiqh* (Jordan: Al-Mahad al-'Alamī li al-Fikr al-Islāmī, 2014); Yūsuf al-Qaraḍāwī, *Dirāsa fī al-maqāṣid al-sharī'a: Bayna al-maqāṣid al-kulliyya wa al-nuṣūṣ al-juz'iyya* (Cairo: Dār al-Shurūq, 2006); Abdullah Bin Bayyah, *Itharāt tajdīdiyya fī ḥuqūl al-uṣūl* (Riyād: Dār al-Ujūh & Dār al-Tajdīd, 2013); Mohammad Hashim Kamali, *Actualization (taf'īl) of Higher Purposes (Maqāṣid) of Shari'ah* (Herndon, VA: International Institute of Islamic Thought, 2020).

4 Some of his most important works on the topic include *Mashāhid min al-maqāṣid* (Riyād: Dār Ujūh lī al-Nashr wā al-Tawzī', 2012); *'Alāqat al-maqāṣid al-sharī'a bī uṣūl al-fiqh* (London: Mu'assasat al-Furqān lī al-Turāth al-Islāmī, 2010); *Tanbīh al-murāja' 'alā ta'ṣīl fiqh al-wāqi'*, 4th ed/ (Dubai: Markaz al-Muwatta, 2018), and *Itharāt tajdīdiyya*. For more on Bin Bayyah's scholarly status and his religious positions, especially after the Arab Spring, see David H. Warren, *Rivals in the Gulf: Yusuf Al-Qaradawi, Abdallah Bin Bayyah and Qatar-UAE Contest Over the Arab Spring and the Gulf Crisis* (London: Routledge, 2021), 71-115 and Usaama al-Azami, "'Abdullāh bin Bayyah and the Arab Revolutions: Counter-revolutionary Neo-traditionalism's Ideal Struggle against Islamism," *The Muslim World* 109, no. 3 (July 2019): 343-361.

5 Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008), 123-124.

6 Muḥammad Sa'īd Ramaḍān al-Būṭī, *Dawābiṭ al-maṣlaḥa fī al-sharī'a al-islāmiyya* (Damascus: al-Maktaba al-Umawiyya, 1966–67); see also al-Būṭī's contribution in Abū Ya'rub Marzūqī and Muḥammad Sa'īd Ramaḍān al-Būṭī, *Ishkāliyyat tajdīd uṣūl al-fiqh* (Beirut and Damascus: Dār al-Fikr, 2006). For more on the debate between al-Būṭī and Marzūqī, see Abdessamad Belhaj, "The Reform Debate: Al-Marzūqi and al-Būṭī on the Renewal of Uṣūl al-Fiqh," *Ilahiyat Studies* 4, no. 1 (Winter/Spring 2013): 9-23 and Hallaq, *Sharī'a*, 535-542.

7 See, Ḥasan Ḥanafī, *Min al-naṣṣ ilā al-wāqi'*, vol. 1 (Cairo: Markaz al-Kitāb lī al-Nashr, 2004); Abd al-Karīm Surūsh, *al-Qabṭ wa al-basṭ fī al-sharī'a* (Beirut: Dār al-Jadīd, 2002); Muḥammad Shaḥrūr, *al-Kitāb wa al-Qur'ān: Qirā'a Mu'āṣira* (Cairo and Damascus: Sīnā' li al-Nashr, 1992).

8 Bin Bayyah, *Ithārāt*, 124-128; *Tanbīh*, 48-56. Regarding the paradigmatic shifts brought by modernity and its significance for Islamic jurisprudence, see Ovamir Anjum, "Managing Epochal Change in a Global Community: A Three-Dimensional Approach to Managing Diversity in Islam," *American Journal of Islamic Studies* 37, no. 1-2 (2020): v-xviii.

9 Abdallah Bin Bayyah, *The Exercise of Islamic Juristic Reasoning by Ascertaining the Ratio Legis: The Jurisprudence of Contemporary and Future Contexts* (Abu Dhabi: Tabah Foundation, 2015), 22.

10 Bin Bayyah, *Ithārāt*, 23.

11 Bin Bayyah, *Ithārāt*, 23.

12 Bin Bayyah, *Mashāhid*, 104.

13 Bin Bayyah, *Ithārāt*, 24.

14 Bin Bayyah, *Ithārāt*, 24.

15 Bin Bayyah, *Ithārāt*, 24.

16 For the above-mentioned calls for reform, see Bin Bayyah, *Ithārāt,* 24-26.

17 Bin Bayyah, *Mashāhid*, 104.

18 See Yūsuf al-Qaraḍāwī, *al-Siyyāsa al-shara'iyya fī ḍū' nuṣūṣ al-sharī'a wa maqāṣi-diha,* 3rd edition (Cairo: Maktaba al-Wahba, 2008), 171-225.

19 Regarding the notion of religious authority and internal criticism, see Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age* (Cambridge: Cambridge University Press, 2012), 34-35.

20 For a succinct analysis of the various contemporary reform proposals of Islamic legal theory, see 'Alī Jum'a, *Qaḍiyyat Tajdīd Uṣūl al-Fiqh* (Cairo, Dār al-Hidāyya, 1993) and Waṣfī 'Āshūr Abū Zayd, *Muḥāwalāt al-tajdīdiyya al-mu'āṣira fī uṣūl al-fiqh: Dirāsa taḥliliyya* (n.p.; Ṣawt al-Qalam al-Arabī, 2009). See also Hallaq, *Sharī'a*, 500-543. For an insightful classification of contemporary Islamic trends of renewal of Islamic Law, see Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (Washington: IIIT Publication, 2007), 153-192.

21 As David Warren states, "Bin Bayyah echoes Qaradawi in his understanding of wasatiyya" (*Rivals in the Gulf*, 79).

22 These elements are manifested also in al-Qaraḍāwī's discourse on *maqāṣid* and the renewal of Islamic law. See Auda, *Maqasid al-Shariah,* 150.

23 The similarity in jurisprudence (*fiqh*) between Bin Bayyah and al-Qaraḍāwī is especially evident in their articulation of the jurisprudence of minorities (*fiqh al-aqalliyyāt*). Cf. Bin Bayyah, *Sinā'at al-fatwā wa fiqh al-aqalliyyāt* (Beirut: Dār al-Minhāj, 2008) and Yuṣūf al-Qaraḍāwī, *Fī fiqh al-aqalliyyāt al-muslima* (Cairo: Dār al-Shurūq, 2001).

24 For the ways in which these hermeneutical tools have been used by Bin Bayyah regarding sensitive topics like the Islamic state, the caliphate, interfaith dialogue, *hudūd*, *jihad*, etc., see Bin Bayyah, *Tanbīh al-murāja'*, 171-211 and *Mashāhid*, 294-321.

25 On this regard, see Sherman Jackson, "Fiction and Formalism: Towards a Functional Analysis of Usul al-Fiqh," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 177–201. For an overview of the western scholarly debate on the role of Islamic legal theory and its relation with substantive law (*fiqh*), see Youcef Soufi, "The Historiography of Sunni Usul al-Fiqh," in *The Oxford Handbook of Islamic Law,* ed. Anver M. Emon and Rumee Ahmed (Oxford: Oxford University Press, 2018), 249-271.

26 Bin Bayyah, *Ithārāt*, 23.

27 Usaama al-Azami, "'Abdullāh bin Bayyah and the Arab Revolutions," 343. In his definition, al-Azami follows Brown's description of the main features of what he calls "Late Sunni traditionalism", which we have labeled here as neo-traditionalism. See Jonathan A.C. Brown, *Hadith: Muhammad's Legacy in the Medieval and Modern World* (Oxford: Oneworld, 2009), 261-263. For more on the definition and understanding of neo-traditionalism, see David Warren, *Rivals in the Gulf*, 7; Usaama al-Azami, "Neo-traditionalist Sufis and Arab Politics: A Preliminary Mapping of the Transnational Networks of Counter revolutionary Scholars after the Arab Revolutions," in *Global Sufism: Boundaries, Structures, and Politics*, ed. F. Piraino and M. Sedgwick (London: Hurst, 2019), 225f. and 278, n. 2; Walaa Quisay, "The Neo-Traditionalist Critique of Modernity and the Production of Political Quietism," in *Political Quietism in Islam: Sunni and Shi'i Practice and Thought*, ed. Saud al-Sarhan (New York: I.B. Tauris, 2019), 242-243; Abdullah Ali, "'Neo-Traditionalism' vs 'Traditionalism,'" *Lamppost*, n.d., accessed October, 10, 2021, https://lamppostedu.org/neo-traditionalism-vs-traditionalism-shaykh-abdullah-bin-hamid-ali.

28 Audah, *Maqāṣid*, 164.

29 Bin Bayyah, *Mashāhid*, 288-294 and *Ithārāt*, 76**.** As al-Auda states, it is precisely in this role of *maqāṣid* for the process of preponderance (*tarjīh*) and the selection of one legal ruling over the other that "neotraditonalism intersects with modernist reformism" (Auda, *Maqāṣid*, 164).

30 As Bin Bayyah states, "Islamic legal methodology is the best method (*manhaj*) invented by the Islamic genius to deal with the texts of divine revelation. It is an eternal method because its source and subject matter derive from the texts of revelation and the language of the preserved Qur'an which guarantees its subsistence and ensures his purity" (*Ithārāt*, 159).

31 Here, Bin Bayyah seems to respond to scholars like Ḥassan al-Turābī (d.2016), Jamāl al-Dīn al-Aṭiyya (d. 2017), Ṭāha Jābir al-Ulwānī (d. 2016) and Salīm al-'Awa (b. 1942), who each on their terms have argued for the need of a thorough reconsideration of the structure of Islamic legal theory. For more on their discourse, see 'Ali Jum'a, *Qaḍiyyat tajdīd*, 18-23.

32 See Yūsuf al-Qaraḍāwī, *Fiqh al-zakāt*, 25th edition, vol. 1 (Cairo: Maktaba Wahba, 2006), 21-22; *Fiqh al-jihād*, 3rd edition, vol. 1 (Cairo: Maktaba Wahba, 2010), 35-36; *Fiqh al-islāmī bayna al-aṣāla wā al-tajdīd*, 2nd edition (Cairo: Maktaba Wahba, 1999), 62-66; *Madkhal lī al-Dirāsa al-Sharīʿa al-Islamiyya* (Beirut: Muwassasa al-Risāla, 1993/1414), 263.

33 This does not mean that this *salafī* tendency is not present also in Bin Bayyah or that his legal analysis lacks any originality. However, whereas scholars like al-Qaraḍāwī are more candid in acknowledging the bypassing of the legal tradition and the novelty of their rulings, Bin Bayyah tries to present his legal conclusions as in conformity with the legal tradition, or certain aspects of it, or dispense with traditional rulings by invoking pragmatic notions like necessity (*ḍarūra*), need (*hāja*), maṣlaḥa, etc.

34 Muḥammad al-Ṭāhir Ibn ʿĀshūr, *Ibn Ashur: Treatise on Maqāṣid al-Shariʿah*, trans. Mohamed el-Tahir el-Mesawi (Washington, IIIT publications, 2006), xxii.

35 See Ahmad al-Raysūnī, *Muḥāḍarāt fī al-maqāṣid al-Sharīʿa* (Cairo: Dār al-kalima li al-nashr wa al-tawziʿ, 2014), 178. See also Felicitas Opwis, "New Trends in Islamic Legal Theory: *Maqāṣid al-Sharīʿa* as a New Source of Law?" *Die Welt des Islams* 57 (2017): 7-32.

36 Bin Bayyah, *Mashāhid*, 288. As Hashim Kamali states, "Bin Bayyah's opinion on the relationship of uṣūl al-fiqh to maqāṣid is that they are inseparable from one another, albeit that maqāṣid is a distinctive chapter in the larger matrix of uṣūl alongside other chapters." Kamali, *Actualization*, 9.

37 Such a tendency is a common feature of contemporary proposals of renewal of legal theory. According to Warren, Bin Bayyah "follows Rida's model of refashioning once-marginal classical concepts and modes of reasoning and bringing them to the center of Islamic legal thought" (*Rivals in the Gulf*, 74). However, in my view, rather than Riḍā's modernist utilitarianism, in this case, Bin Bayyah follows the more conservative articulation of Riḍā's model by revivalists and centrist scholars like al-Qaraḍāwī.

38 Mohammad Hashim Kamali, "Maqāṣid al-Sharīʿah: The Objectives of Islamic Law", *Islamic Studies* 38, no. 2 (Summer 1999): 198; "Maqasid al-Shariʿah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective," *Islam and Civilisational Renewal* 2 (2011): 245-246; *Shariʿah Law: An Introduction* (Oxford: Oneworld, 2008),124-125.

39 Kamali, *Maqāṣid al-Sharīʿah*, 198.

40 Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from 4th/10th to 8th /15th Century* (Leiden: Brill, 2010), 15. See also Wael B. Hallaq, "Considerations on the Function and Character of Sunnī Legal Theory," *Journal of the American Oriental Society* 104, no. 4 (October-December 1984):686.

41 Bin Bayyah, *ʿAlāqat al-maqāṣid*, 48.

42 For a succinct analysis of the different usages of the term *istidlāl* in Islamic Law, see Muḥammad al-Rukay, *Nazariyyat al-taqʻīd al-fiqhī wa athāruhā fī ikhtilāf al-fukahā'* (Casablanca: Kuliyyat al-Adab wa al-Ulūm al-Insāniyya, 1994), 129-163; ʻUmar al-Maḥmūdī, *Mafhūm al-istidlāl ʻinda al-uṣūliyyīn wa taṭawwur dalālatihī*, accessed October, 10, 2021, https://diae.net/49098/.

43 Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidi* (State Lake City: University of Utah Press, 2010), 647.

44 For the abovementioned examples from the time of the Companions, see Bin Bayyah, *ʻAlāqat al-maqāṣid* , 39-40; *Mashāhid*, 55-57.

45 Bin Bayyah, *ʻAlāqat al-maqāṣid*, 39-40; *Mashāhid*, 55-60.

46 Ibn Taymiyya, *Majmūʻ al-Fatāwā*, vol. 30, 29. Quoted in Bin Bayyah, *ʻAlāqat al-maqāṣid*, 41.

47 Quoted in Bin Bayyah, *ʻAlāqat al-maqāṣid*, 41; *Mashāhid*, 58.

48 Bin Bayyah, *Mashāhid*, 60-70.

49 Bin Bayyah, *ʻAlāqat al-maqāṣid*, 39-40; *Mashāhid*, 61-62.

50 On al-Shafiʻī's theory of *ijtihād* and especially on his position regarding *istiḥsān* and other *istidlāl* elements, see Muhammad bin Idris al-Shafiʻī, *Al-Shafiʻī's Risāla: Treatise on the Foundations of Islamic Jurisprudence*, trans. Majid Khadduri (Cambridge: Islamic Text Society, 2010), 295-353 and Joseph A. Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʻī* (Leiden: Brill, 2007), 327-357.

51 Bin Bayyah, *ʻAlāqat al-maqāṣid*, 44-45; *Mashāhid*, 63-64.

52 See Bin Bayyah, *ʻAlāqat al-maqāṣid*, 45. In his study of the Risāla of Imām al-Shafiʻī, Joseph Lowry argues that "the Risāla can no longer be claimed to be the direct progenitor of uṣūl al-fiqh" (*Early Islamic Legal Theory*, 360). Wael B. Hallaq situates the emergence of *uṣūl al-fiqh*, as a genre, at the end of the 9th and the beginning of 10th century: see Hallaq, "Was al-Shafiʻi the Master Architect of Islamic Jurisprudence?," *International Journal of Middle East Studies* 25, no. 4 (1993): 587-605. For contrarian views that restate the importance of Imām al-Shafiʻī's *Risāla* for the emergence of Islamic legal theory as a genre, see Devin J. Stewart, *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City: University of Utah Press, 1998), 30-37; Ahmed El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory," *Journal of the American Oriental Society* 137, no. 3 (2017): 505-36, and David Vishanoff, *The Formation of Islamic Hermeneutics: How Sunni Legal Theories Imagined a Revealed Law* (New Haven, Conn.: American Oriental Society, 2011), xvi. For Hallaq's response to the critics, see "Uṣūl al-Fiqh and Shāfiʻī's Risāla Revisited," *Journal of Arabic and Islamic Studies* 19 (2019): 129–183.

53 For the various strategies developed by Muslim jurists to legitimize and ground juristic preference and public welfare in the structure of Islamic legal theory, see Hallaq, "Considerations," 679-689.

54 Bin Bayyah, *ʿAlāqat al-maqāṣid*, 48; *Mashāhid*, 67-68.

55 Bin Bayyah, *ʿAlāqat al-maqāṣid*, 48; *Mashāhid*, 68.

56 Hallaq, "Logic," 318.

57 Hallaq, "Logic," 318.

58 For the various textually-oriented strategies adopted to justify *istiḥsān*, see Mohammad Hashim Kamali, "Istiḥsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004): 561-581; Wael B. Hallaq, "Considerations," 683-685.

59 Hallaq, "Considerations," 684.

60 As Kamali expresses it, the textual orientation of Islamic legal theory is behind the reason why (although not denied in principle) "the maqasid remained on the fringes of the mainstream juristic thought that was manifested in the various themes and doctrines of Uṣūl al-Fiqh" (*Maqāṣid al-Sharīʿah*, 198).

61 For the Aristotelian four types of causation and its presence in Islamic Philosophy, see Robert Wisnovski, "Towards a History of Avicenna's Distinction between Immanent and Transcendent Causes," in *Before and After Avicena: Proceeding of the First Conference of the Avicenna Study Group*, ed. D.C. Reisman and A.H. Al-Rahim (Leiden: Brill, 2003), 49-69.

62 Bin Bayyah, *Ithārāt*, 28.

63 Bin Bayyah, *Ithārāt*, 28-30.

64 Bin Bayyah, *Ithārāt*, 28.

65 Regarding these three kinds of *ijtihād*, see Bin Bayyah, *Ithārāt*, 42-43.

66 For the first type of *ijtihād*, see ʿAbdullah Bin Bayyah, *Amālī al-dalālāt fī majālī al-ikhtilāfāt* (Bayrūt: Dār al-Minhāj, 2007); for the second, see *al-Ithārāt* and *Mashāhid*; and for the third type, see *Tanbih* and *al-Ijtihād bī taḥqīq al-manāṭ: Fiqh al-wāqiʿ wa tawāquʿ* (Abu Dhabi: Mu'assasa Tābah, 2014)_

67 Bin Bayyah, *Ithārāt*, 62.

68 Bin Bayyah, *Mashāhid*, 294.

69 Bin Bayyah, *Mashāhid*, 302.

70 Bin Bayyah, *Mashāhid*, 305.

71 Bin Bayyah, *Ithārāt*, 70.

72 Bin Bayyah, *Ithārāt*, 67-77.

73 Bin Bayyah, *Ithārāt*, 67.

74 Bin Bayyah, *Ithārāt*, 70.

75 Bin Bayyah, *Ithārāt*, 70, 72.

76 Bin Bayyah, *Ithārāt*, 70.

77 For Bin Bayyah's analysis of the four *uṣūlī* circles, see *Ithārāt*, 70; *Mashāhid*, 294-295.

78 Bin Bayyah, *Ithārāt*, 70; *Mashāhid*, 295.

79 Bin Bayyah, *Mashāhid*, 296.

80 Bin Bayyah, *Mashāhid*, 298.

81 Bin Bayyah, *Mashāhid*, 299.

82 Bin Bayyah, *Mashāhid*, 299-300. For a series of classical examples of *istiḥsān*, see Bin Bayyah, *Mashāhid*, 297-301. For contemporary examples and analysis, see Mohammad Hashim Kamali, "Istiḥsān," 561-581.

83 Bin Bayyah, *Ithārāt*, 71.

84 Shāṭibī, *Muwāfaqāt*, vol. 3, 171. Quoted in Bin Bayyah *Ithārāt*, 72; *Mashāhid*, 117.

85 Shāṭibī, *Muwāfaqāt*, vol. 3, 176. Quoted in Bin Bayyah *Ithārāt*, 73; *Mashāhid*, 119.

86 Shāṭibī, *Muwāfaqāt*, vol. 1, 498. Quoted in Bin Bayyah *Ithārāt*, 73; *Mashāhid*, 119-120.

87 For the explanation of the above-mentioned possibilities, we have relied extensively on Bin Bayyah, *Mashāhid*, 78-79.

88 Bin Bayyah, *Ithārāt*, 75.

89 According to Bin Bayyah, "Ijraʾ al-ʿamal or jarayān al-ʿamal is to take a weaker view from (the views of) a credible scholar when passing a court judgment or issuing a legal verdict in a certain time or place for the purpose of realizing a particular benefit or preventing a particular harm" (The Exercise of Islamic Juristic Reasoning, 29). See also ʿAbdullah Bin Bayyah, Ṣināʿat al-fatwā wa fiqh al-aqalliyyāt (Jeddah: Dar al-Minhaj, 2008), 114.

90 On some concrete examples on this regard see, Bin Bayyah, *Ṣināʿat al-fatwā*, 114-121 and *The Exercise of Islamic Juristic Reasoning*, 28-29.

91 Bin Bayyah, *Ithārāt*, 75.

92 Bin Bayyah, *Mashāhid*, 302.

93 Bin Bayyah, *Ithārāt*,75.

94 Bin Bayyah, *Ithārāt*, 70.

95 Bin Bayyah, *Mashāhid*, 288-294. See also *Ithārāt*, 76.

96 Opwis, *Maṣlaḥa*, 5-6.

97 Bin Bayyah, *Ithārāt*, 77.

98 Bin Bayyah, *Ithārāt*, 89.

99 Bin Bayyah, *Ithārāt*, 77.

100 Bin Bayyah, *Ithārāt*, 77.

101 Bin Bayyah, *Ithārāt*, 84.

102 Bin Bayyah, *Ithārāt*, 79-80. For more on al-Ghazālī's discussion on the epistemic status of legal analogy, see Felicitas Opwis, "Syllogistic Logic in Islamic Legal Theory: al-Ghazālī's Arguments for the Certainty of Legal Analogy (Qiyās)," in

Philosophy and Jurisprudence in the Islamic World, ed. Peter Adamson, vol. 1 (Berlin, Boston: De Gruyter, 2019), 93-112.

103 Wael B. Hallaq, *Ibn Taymiyya Against the Greek Logicians* (Oxford: Clarendon Press, 1993), xxxv.

104 Hallaq, *Ibn Taymiyya*, xxxv.

105 Al-Ṭūfī, *Sharḥ Mukhtaṣar Rawḍa*, vol. 3, 225. Quoted in Bin Bayyah, *Ithārāt*, 84.

106 Hallaq, "Logic," 315-316; Opwis, "Syllogistic Logic," 95**;** Weiss, *The Search*, 648-649**.**

107 See Abū Hāmid al-Ghazālī, *al-Mustaṣfā min ʿilm al-uṣūl*, critical edition of Muḥammad Yūsuf Najm, 3rd ed., vol. 1 (Beirut: Dār Ṣādir, 2010), 17-67.

108 Bin Bayyah, *Ithārāt*, 30.

109 Bin Bayyah, *Ithārāt*, 89.

110 Bin Bayyah, *Ithārāt*, 89.

111 Bin Bayyah, *Ithārāt*, 161.

112 Bin Bayyah, *Ithārāt*, 90.

113 See Bin Bayyah, *Tanbih* and *al-ijtihād.*

114 For more on the logic and the role of the formal arguments in Islamic legal theory, see Wael B. Hallaq, "Logic, Formal Arguments and Formalization of Arguments in Sunnī Jurisprudence," *Arabica* 37, no. 3 (November 1990): 315-358.

115 Hallaq, "*Logic,"* 318.

116 Bin Bayyah, *The Exercise of Islamic Juristic Reasoning*, 5, 7.

117 Bin Bayyah, *Ithārāt*, 71.

118 Bin Bayyah, *Ithārāt*, 95.

119 Bin Bayyah, *Ithārāt*, 96.

120 Bin Bayyah, *Ithārāt*, 98-99

121 Bin Bayyah, *Ithārāt*, 68; *Mashāhid*, 294.

122 Bin Bayyah, *Mashāhid*, 288.

123 Bin Bayyah, *ʿAlāqat al-maqāṣid* , 131.

124 For the following explanation and examples, we have relied extensively on Bin Bayyah, *Mashāhid* 154-180 and *ʿAlāqat al-maqāṣid*, 99-131.

125 See Ibn Rushd, *The Distinguished Jurist's Primer*, volume 1-2, trans. Imran Ahsan Khan Nyazee (Reading: Garnet, 1994, 1996). For a close study of six traditional works of *takhrīj* genre together with many examples, see Atif Ahmed Atif, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence* (Leiden: Brill, 2006).

126 See al-Sharīf al-Tilmisānī, *Miftāḥ al-wuṣūl ilā binā' al-furu' alā al-uṣūl*, critical edition of Muḥammad ʿAlī Farkūs (Beirut: al-Maktaba al-Makiyyā & Muwassassa al-Rayyān, 1998), 440-441.

127 al-Tilmisānī, *Miftāḥ al-uṣūl*, 473.

Qur'anic Stories: God, Revelation and the Audience

EDINBURGH UNIVERSITY PRESS, 2021. 175 PAGES.

LEYLA OZGUR ALHASSEN

This monograph is an impressive addition to the growing number of studies on the Qur'an as a literary text. The declared focus is not on theology but on theography. To quote Jack Miles, who introduced the term theography: "While theology typically uses the difficult tools of philosophy, theography gravitates toward the more user-friendly and descriptive tools of literary appreciation and, to a point, even towards the tool of biography. Rather than attempt to state the significance of the divine character in philosophical terms, theography aspires more modestly to *meet* him in the same simple way that characters can be met on the pages of a work of literary art" [*God in the Qur'an* (New York: Alfred A. Knopf, 2018), 17].

Alhassen has a different objective in her use of theography. While Miles explores the comparative aspects of Biblical and Qur'anic stories in applying the tools of theography, Alhassen is intent on examining the Qur'an as narrative performance in its own terms. Her approach centers on God as narrator in three roles, or as she says, three layers: God as narrator to a general audience, God as narrator to the Prophet Muhammad, and then God as a character interacting with other characters. In terms

familiar to students of Qur'anic commentary (*tafsīr*), Alhassen is deploying a mode of analysis known as *tafsīr al-qur'ān bil-qur'ān* (commentary of the Qur'an with, and through, the Qur'an). She is mindful of precursors, going back to the earliest (al-Tustari) and extending to modern practitioners (Sayyid Qutb), but she is focused above all on how certain stories are constructed and what is the message, above all literary and performative, in their structure.

The content of these stories is selective. It hones in on three characters: Mary, the mother of Jesus; Joseph; and Moses. The effort in each instance is to provide stylistic features from Qur'anic surahs that refer to other surahs, incentivizing further reading but also humility about the degree of human comprehension permitted by the Narrator. In the simplest language, Elhassen hopes to illustrate how God manages—or manipulates—revelation to both reveal and conceal, disclose and hide, His intent. Each chapter exposes the ambiguity and ambivalence of divine intent. Chapter One is titled "Knowledge, Control and Consonance in *Surat Al `Imran* 3:33-62." It includes unexplained leaps across time, that is, disjunctures and aporia. Though they may be disorienting, they are bracketed with a consonance between the readers and the characters, and even the readers and God, impelling readers to search elsewhere in the Qur'an for answers to their puzzlement. Similarly, in Chapter Two, "God, Families and Secrets in the Story of *Surat Maryam* 19:1-58", we find that story's structure once again reinforces God's privileged and omniscient position, so much so that God as narrator also becomes part of the story He Himself reveals. Chapter Three is in some ways the most explicit demonstration of God's deliberate dalliance with the reader/listener. It is focused on "Evidence, Judgment and Remorse in *Surat Yusuf*". While many commentators have struggled to understand certain features of the text, Elhassen explains that the divine intent supersedes and cancels all human concerns in *Surat Yūsuf*. "God centres Himself in that story: all that matters is God's forgiveness, truth and judgment; human notions of evidence, guilt and remorse are insignificant" (10). Chapter Four turns to Moses, and takes another twist in the narratological strategy of theography. "Merging Words and Making Connections in *Surat Taha*", like its sequel, Chapter Five, "*Surat al-Qasas* and its Audience," foregrounds God "as an omniscient and reliable narrator

who sometimes withholds information from readers or makes them work hard by using subtle language" (10). At every point the intratextual evidence buttresses God's intent as the engaged yet reticent narrator, one who "provides new and sometimes exclusive details, while also presenting new mysteries", "mysteries meant to keep the audience in their place" (11).

Perhaps the strongest, and certainly most novel, element in her analysis is to refocus on the intent of the opening, disconnected letters, *ḥurūf al-muqaṭṭa`āt* or *fawātiḥ al-ṣuwar,* that mark 29 surahs or roughly one-quarter of the entire Qur'anic corpus. While dismissed or glossed by some commentators, Muslim and non-Muslim, Alhassen sees them as part of the divine strategy to "withhold information from readers in order to make certain theological points" (77). This is evident in several stories that she analyzes but especially in *Surat Yūsuf.* Like other surahs which begin with these disconnected letters, they occur at the beginning in order to stress the authoritative message that follows, so that the first three verses of *Surat Yūsuf* read (in Abdel Haleem's 2010 translation, which she prefers throughout):

> 12:1 *Alif Lam Ra* These are the verses of the Scripture that makes things clear –
> 2 We have sent it down as an Arabic Qur'an so that you (people) may understand.
> 3 We tell you [Prophet] the best of stories in revealing this Qur'an to you. Before this you were one of those who knew nothing about them.

And she then explores the logic of gradual disclosure, beginning with "letters that make up words (12:1), then narrow to the Arabic Qur'an (12:2) and, finally, focus even further on the stories in the Qur'an, or this specific story (12:3)" (78).

It is not clear that the *muqaṭṭa`āt* have the same explanatory power in other surahs, those that unfold Qur'anic stories about Mary and Moses in Chapters 3, 5, and 6. About their function in Q 19:1 we are simply told that Shawkat Toorawa, in his pioneering study of this surah, had demonstrated that the five disconnected letters here are unlike other disconnected letters in the Qur'an because they offset the rhyme pattern of the rest of the surah (46-47), but the theological point remains obscure.

In Chapters 5 & 6, with reference to Moses narratives in *Surat Ṭāhā* (Q 20) and *Surat al-Qaṣaṣ* (Q 28), there is no discussion of the *muqaṭṭa`āt*, though other points of interest are explored with fascinating, often compelling insight. What one misses is any reference to another explanation of these opening letters, the one offered by Muhammad Asad, to wit, that in some cases, including *Surat Ṭāhā*, the letters can be a meaningful colloquial expression in pre-Islamic Arabian dialects, in this case, *tā hā* signifying "O man" (Asad, *The Message of the Qur'an* 225, n.1).

But the shortfall on this matter is small in comparison to the advance in rethinking the literary quality and authorial intent of the Qu'ran as divine wit. The theological claims in Alhassen's exercise are subtly restated: God is Omnipotent but not Capricious. He conceals in order to engage and encourage the reader. Though there persists the central conflict between believer and disbeliever, insider and outsider, to the Qur'anic message and Muhammad's mission, Alhassen demonstrates time and again how literary analysis, and literary analysis alone, can yield the deeper levels of meaning and the incentive for belief/obedience at the heart of the Qur'anic corpus. While there are numerous precursors in this endeavor—with several mentioned beside Sayyid Qutb—Alhassen wants to underscore how literary analysis, far from eliminating or reducing, instead buttresses a theological agenda. As she concludes, "the narratological, semantic and rhetorical approach has provided new insights into Qur'anic stories, showing ways in which they advance the overall metaphysical and ethical messages of the Qur'an" (159). For all readers of this extraordinary performative text, whatever their background, motive, or outlook, the stories come alive with a fresh, invigorating and engaging analysis, at once exploratory and comprehensive. Though this study does not displace or eliminate the need for Qur'anic commentary (*tafsīr*), it expands the range of interpretative possibilities and so enhances the allure of the central text.

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Islamic Theology in the Turkish Republic

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PHILIP DORROLL

The book under review offers an analysis of Islamic theology delineated broadly under the auspices of the Ottomans and the nation-state of Turkey, in past and present. As outlined in its introduction, the book comprises five chapters: 1. Origins, 2. Nation, 3. God, 4. Humanity, 5. Futures.

In Chapter One, Dorroll substantiates the traditional Ottoman origins of Islamic theology in the Republican Turkey with reference to three major themes: Classical Islamic theology (*kalām*) during the Ottomans; Islamic Modernism at the turn of the twentieth century; and the use of sociological theories during the transition from the Ottoman to the Republican regime. Dorroll highlights the significance of the *madrasa*s for the Ottoman system in continuity from the previous Saljūqid regime in institutionally linking religion to the state, beyond providing educational services (19). *Madrasa*s were bureaucratized and thus sponsored by the state, while training judges, staff for practical religious services and other state functionaries (18-21). Dorroll underlines the policy of the Ottoman system to centralize the religious authority under the state, as exemplified in the office of Shaykh al-Islam and integrating the *ʿulamā* into the state machinery, especially for how such integration would

render the state an unprecedented sacrality (20-22). He provides extensive information about the rise of *madrasa*s, the significance of their curricula and dominant theological textbooks, while establishing how the Ottoman Sunni theology developed at *madrasas* under the auspices of the state during the fifteenth and sixteenth centuries. Dorroll then analyzes modernist theological interpretations during the late Ottoman and early Republican periods of Turkey in the broad context of Islamic modernism. He provides a detailed survey of intellectual debates in Islamic modernism during the decline of the Ottoman Empire through the years of the First World War to the early decades of the Republican Turkey. Thus he establishes a continuity from the Ottoman *madrasa*s to modern university departments, with particular focus upon the Faculty of Divinity of Ankara University and its historical trajectory from Ottoman Sunni theology to what he calls modern Turkish theology.

In Chapter Two, Dorroll focuses mainly on the correlation between Turkish nationalism and Turkish theology, following on the previous chapter's account of late Ottoman Islamic modernism. In both cases, the French Revolution enhances the motivation for theological re-interpretations in modern national contexts (57). Among other scholars, the Ottoman Shaykh al-Islam Musa Kazım (1858/59-1920), İsmail Hakkı İzmirli (1869-1946), and Elmalılı Hamdi Yazır (1878-1942) are given generous coverage as advocates for liberty, equality, and justice as common values for both the nation and the religion.

Dorroll duly underlines the significance of Said Nursi (1877-1960) in his endeavors to combat materialism in favor of reinforcing Islamic belief (*īmān*), albeit without overtly challenging the secularist paradigm of the state. Dorroll compares Nursi with Izmirli, as both scholars were against materialistic philosophies. He notes that Nursi, unlike Izmirli, was not a member of the Ottoman Istanbul elite; he spent the bulk of his life disseminating his theological messages in informal study circles and promoting educational reforms in various provinces of the Ottoman Empire (71). However, Dorroll does not deal with Nursi's Shāfiʿite origin, which could have led the way to a comparative analysis of Shāfiʿite-Ashʿarite Sunnī theological discourses in the context of the madrasas of the predominantly Shafiʿite Eastern Anatolian provinces of the Ottoman

Empire, where he was raised, educated, and called for the implementation of his rejected educational reform project (*madrasat al-zahrā*).

Meanwhile, Dorroll quite rightly highlights that the ideology of Turkish nationalism stimulated intellectual interest to enhance the interpretation of Islamic theology based upon the "moderate rationalist" Maturīdī theological school. Indeed, its famous eponym, the classical Transoxanian theologian, Abu Mansur al-Maturīdī (d. 944), has an immensely significant place in Islamic theology in both the Ottoman and the Republican eras of Turkey. His *Kitāb al-Tawḥīd* and *Ta'wīlāt al-Qur'ān* were both recently published in Turkish translation by modern Turkish academics. Dorroll states the Turkish nationalists' interest in Maturidism as follows: "Because al-Maturīdī came to be understood as a part of Turkish national heritage, this enabled the retrieval and revival of his theology in the Turkish Republican context" (64). In fact, the creation of the Diyanet offices was essentially in a *de facto* continuity with the Ottoman office of Shaykh al-Islām, which had followed a Maturidi-Hanafi theological line for centuries. In time, the popularity of Maturidi theology has advanced beyond the interest of academics to the extent that columnists like the late Gündüz Aktan and Taha Akyol (known for their former affiliations to the far-right Nationalist Action Party) could proclaim the exemplary harmony between the nature of the Turks and Maturidi theology (see Aktan, *Radikal*, 12 October 2004 & Akyol, *Milliyet*, 10 July 2007).

In Chapter Three, Dorroll highlights the leading role of Izmirli and Bekir Topaloğlu (1932-2016) in the academic study of Islamic theology (*kalām*) in Turkey. This chapter focuses on the relationship between unchangeable eternal truth and changeable worldly contexts.

In Chapter Four, Dorroll rightly focuses on Hüseyin Atay's argument for the correlation of reason and revelation (126). Atay, an emeritus professor and a leading academic in theological studies from Ankara University's Faculty of Divinity, puts a great emphasis upon human reason in harmony with divine revelation. As a leading rationalist theologian, Atay focuses upon the Qur'an while being critical of traditional historical systematic theological interpretations, which he deems not justifiable through human reasoning (125). Atay, as rightly interpreted

by Dorroll, "argues for the use of independent reason connected with revealed religious principles as the key to elaborating a modern Islamic theological framework in Turkey" (125). Indeed, Atay persistently advocates for the use of reason in interpretation of Qur'anic theological principles and practical legal rulings.

In Chapter Five, Dorroll covers the impact of state power on the development and future opportunities of theology in Turkey. He compares the potential of Kemalism to that of the Justice and Development Party's rule over the past two decades (165). Dorroll pinpoints the crucial influence of the state in shaping theological discourses through the presently over a hundred Faculties of Divinity/Islamic Studies at Turkish universities and practical religious services through Diyanet, which administers roughly over ninety thousand officially registered mosques. He notes, for instance, that "in the Turkish Republic religion has always been subject to close state supervision under the principle of laiklik, or Turkish laicism," which he glosses further as the "particularly strong version of secularism … whereby the state retains the right to approve and supervise all formal religious institutions and organizations in the country" (166). In turn, this means that "Religious discourses such as theology are therefore seen by the Turkish state as legitimate objects of control," not just in the present but indeed "throughout the history of the Turkish Republic" (166).

In general, the book covers academic theological discourses from the Ottoman academic elite, predominantly from Ismail Hakki Izmirli, and then turns to the views of two leading academics of the second half of the twentieth century and the early twenty-first century (the Istanbul-based Bekir Topaloğlu and the Ankara-based Hüseyin Atay). The scope of the book is in a way demarcated by the official public line of Islamic theology (Hanafi-Maturidi discourses in the Ottoman and the Republican systems of Turkey). Over its course it turns covers certain issues causing tensions with regard to religion in national public contexts, such as the former prohibition of female students wearing headscarves on university campuses, particularly in the 1990s (177), gender inequalities, misogynistic discourses originating from theological interpretations of classical religious texts (147 ff.), and LGBTI+ related theological discussions (181

ff.). Notably, the book does not mention Alawites or Alawism, which remains a major issue of serious theopolitical tension in both theoretical and practical religious, social and political public contexts of Turkey. In sum, this book aptly brings forth the strategic interrelationship of religion and state, and the influential role of the state in determining the theological discourses and perceptions from within the Hanafi-Maturidi line of Islamic theology in the Turkish official public space, during the eras of both Ottoman and Republican Turkey.

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Sufism in Ottoman Egypt: Circulation, Renewal and Authority in the Seventeenth and Eighteenth Centuries

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RACHIDA CHIH

This book examines Sufism in Ottoman Egypt in the seventeenth and eighteenth centuries. Contrary to the traditional historiography that interpreted these two centuries as a period of stagnation and/or decline for Sufism and Sufi scholars, Rachida Chih argues that these centuries were fruitful, productive, and dynamic for Sufism in Ottoman Egypt. Chih builds her narrative around the mobilization and interaction of ideas, people, and institutions, focusing her thesis on the Khalwatiyya Sufi order.

In the first chapter, the author describes how Ottoman Egypt of the seventeenth and eighteenth centuries was a lively destination for ethnically and socio-economically diverse religious scholars from various Ottoman provinces. Al-Azhar served as a significant meeting point for scholars both in the formation and function of this intellectual network, which was notable as al-Azhar was dominated both intellectually and administratively by scholars who were followers of the Khalwatiyya Sufi path. The author also shows that this dynamic circulation was

enriched by the mobility of scholars and students in al-Azhar, together with the service of mushrooming religious institutions such as madrasas, mosques, and zawiyas.

In the second chapter, the author outlines the spiritual and practical principles of the Khalwatiyya Sufi order through examination of three handbooks written by Qāsim al-Khāni (d. 1697), Muḥammad al-Munīr al-Samanūdī (d. 1785), and Aḥmad al-Dardīr (d. 1786). While al-Khānī's work was more concerned with the spiritual aspect of the Sufi path, such as methods of the spiritual journey towards God (*sulūk*), the other two works focused on practical principles such as dhikr ceremonies and mutual responsibilities of master (shaykh) and disciple. By indicating the commonalities of these works, specifically where it comes to the propagation and pedagogy of the Sufi order, Chih also points out the increasing popularity of the handbook genre and transmission of knowledge in the Sufi environment of the seventeenth and eighteenth centuries in Ottoman Egypt.

The third chapter of the book is devoted to a discussion of a particular concept, the Muhammadan path (*ṭarīqa muḥammadiyya*), and the conceptualization of the term by contemporary Sufis. The chapter begins with discussion and critique of the term 'neo-Sufism', a term invented by Fazlur Rahman. Chih then illustrates how the concept 'Muhammadan path' was formulated by Sufis and evolved through scholarly circulation. For this purpose, the author scrutinizes various genres and practices interrelated with the Muhammadan path such as *taṣliya* (the invocation of God's blessing upon the Prophet Muḥammad), *mawlid* (the celebration of the birth of the Prophet Muhammad) and *mi'raj* (celestial ascension of Prophet Muhammad) narratives.

In the final chapter, the author discusses the sainthood cult through the examination of the hagiography of Shaykh al-Hifnī (d. 1767), who was one of the most influential Khalwatiyya sheikhs in eighteenth-century Ottoman Egypt. Chih provides a detailed examination of al-Hifnī's hagiography composed by ʿAlī Shamma al-Fuwwī al-Makkī (d. 1763). She shows that the sainthood cult was highly embedded in the Prophetic heritage, as al-Hifnī's hagiography constantly draws parallels between the paradigmatic life of the Prophet and al-Hifnī. The chapter continues

with analyzing al-Hifnī's social and political authority and his influence on political elites. The rest of the chapter focuses on reactions to Sufism as it was exemplified by the *Kadızadeli* movement (an anti-Sufi and puritanical religious movement) in the Ottoman Empire and the emergence of Wahhabism on the Arabian Peninsula.

Given the scarcity of studies in Western languages on the topic, this book fills a gap in the literature. It will prove an invitation for further research not for only researchers of the seventeenth and eighteenth centuries but also for researchers of the long nineteenth century. The high number of primary sources in Arabic that the author utilized constitutes another factor that makes this study valuable. Nevertheless, there are a few shortcomings that need to be addressed. Although Chih attempts to reveal the relationship between Sufis and political elites in the final chapter, these efforts lack detail. A more thorough analysis of the relationship would have better supported the purpose of the study. Another deficiency, considering the abundance of archival materials on the subject in Ottoman archives, is that the author does not utilize primary sources in Turkish. This inhibits a fuller understanding of how Sufi scholars of seventeenth- and eighteenth-century Egypt were interrelated with the rest of the Ottoman world. These shortcomings aside, this book is well-structured and rich. It will remain a significant reference for those who conduct research on Egyptian Sufism.

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Christian Monastic Life in Early Islam

EDINBURGH: EDINBURGH UNIVERSITY PRESS, 2021. 248 PAGES.

BRADLEY BOWMAN

The historical interaction between Muslims and their non-Muslim subjects and neighbors is a topic of interest for many scholars who are interested in the potential for positive interreligious coexistence past and present. Several recent books speak to different aspects of this relationship with a particular focus on Christians living under the rule of the early Muslims. These include Jack Tannous's *The Making of the Medieval Middle East* (Princeton University Press, 2018), a broad look at the transition from Christian to Muslim rule in the region, and Christian Sahner's *Christian Martyrs under Islam* (Princeton University Press, 2020), which focuses more specifically on the phenomenon of martyrdom. In line with the more tightly contained scope of the latter work, Bradley Bowman's new book takes a close look at Christian monks in the Middle East and their interactions with the new societal structures and ideologies of Islam.

Unlike Sahner, whose focus on martyrdom leads by definition to accounts of interreligious conflict, Bowman finds far more positive encounters in his research on monasticism. In addition to the historical evidence that monasteries survived, and often thrived, under early Islamic rule, Bowman points to important Islamic literary works such as the *Kitāb al-diyārāt* (Book of Monasteries) of al-Shābushtī and the *Kitāb*

al-ruhbān (Book of Monks) of Ibn Abī al-Dunyā, each of which preserves many early accounts of the physical and spiritual advantages of monastic establishments and their residents. He also analyzes several well-known stories of early Muslims and their interactions with monks, especially the conversion story of Salmān al-Fārisī, the Prophet Muḥammad's interactions with Baḥīrā and other monks, and the caliph ʿUmar ibn ʿAbd al-ʿAzīz's end-of-life visit to the monastery of Simeon Stylites. Each of these sources provides evidence that many early Muslims had great respect for the ascetic and devotional practices of the monks whom they encountered in the lands of the caliphate.

Bowman interprets this evidence through the theoretical frameworks provided by several contemporary scholars. He agrees with the emphasis placed by Tannous and other scholars on the concept of "confessional fluidity" (25), noting that the majority of Christians and Muslims had little awareness of the doctrinal details that supposedly distinguished them from each other. Most importantly, however, he draws on the ideas advocated by Fred Donner in *Muhammad and the Believers* (Belknap Press, 2010) and other works, seeing the initial community that gathered around the Prophet Muḥammad as a community of reformist "believers" (*muʾminūn*) who emphasized piety and devotion and at times transcended religious boundaries. Bowman's book represents one of the most important attempts to understand how Donner's "Believers' Movement" thesis might impact our assessment of the life of non-Muslims in the first centuries after the life of the Prophet. For Bowman, Donner's theory can explain much of the positive attitude toward monks that can be seen among early Muslims, indicating not only that early Muslims tolerated the existence of monks in their territory, but that many early Muslims saw monastic practice as legitimate and inspirational, whether or not these Muslims actively participated at times in the life of the monasteries.

The book is divided into six chapters. The first chapter provides a theoretical overview of the porous confessional boundaries that are so important for Bowman's argument, along with a discussion of the number and condition of monastic institutions in the lands of the early caliphate. The chapter closes with a discussion of the conversion account of Salmān al-Fārisī, a topic on which Bowman has written before. The fact

that Salmān's journey to Islam was facilitated in large part by Christian monks is taken as evidence that the early Muslims who told the story had some level of admiration for their monastic neighbors, even if they viewed monastic practice as a potential intermediate step on the path to Islam.

The second chapter discusses the situation of monastic establishments in the period before the rise of Islam, in particular the precarity and destruction brought by the Byzantine-Sasanian war of the early seventh century. In contrast, Bowman argues that the conquests of the caliphs caused relatively little damage to monasteries; on the contrary, a number of Christian sources from this period view the arrival of Arab rule as a divine blessing, especially for monks. For example, John bar Penkāyē writes in the late seventh century that the Muslims possess "a special ordinance from God concerning our monastic station, that they should hold it in honor" (82).

In chapter three, Bowman focuses on the ways that the empires of the region interacted administratively with monasteries and their inhabitants, addressing many Byzantine and Sasanian policies that were incorporated into early Islamic practices with little or no alteration. He presents evidence that many of the policies later considered to be foundational elements of Islamic administration with respect to their non-Muslim subjects, including the ideals of the so-called Pact of ʿUmar, were either unknown or simply disregarded in the early centuries of Islamic history. However, he also notes that the tax regimen of the caliphate could be an economic burden for monasteries and that Chalcedonian monasteries were particularly impacted because they were cut off from their imperial sources of funding and support.

An important part of the book's argument is found in the fourth chapter, where Bowman addresses the common conception that most Muslim visits to monasteries were undertaken for the sake of drinking wine and otherwise flouting the moral expectations of Islamic society. Bowman emphasizes that while this was true in some cases, other Muslims attended monasteries because they found them to be valuable sites of religious devotion or because they were travelers in need of the hospitality that monasteries provided in remote locations. He notes that most early Muslims were recent converts or were descended from

recent converts, and many of them had a Christian background, so the religious ceremonies carried out at monasteries would not be alien to them. Moreover, for those whose Islam included an emphasis on piety and asceticism, the ideas and practices of the monks were often quite congenial.

This discussion continues into chapter five, focusing on Muslim appreciation for monasticism and its significance in terms of Donner's theory of early Muslim ecumenism. Bowman also returns to the story of Salmān al-Fārisī and discusses some Qur'anic passages that have sometimes been read as condemnations of monasticism, even if this interpretation has not been unanimously held by the most influential commentators. Finally, chapter six argues that pietistic early Muslims and Christian monks could be grouped ecumenically under the title of "God-fearers" and that this terminology would have been viewed positively across communal boundaries. Bowman concludes, as he began, with a discussion of Ibn Abī al-Dunyā, who felt that "there was much wisdom to be gained through dialogue with Christian ascetics" (233).

Bowman's book covers some relatively new ground, especially in its focused application of Donner's theory to the history of Christian monasticism. His use of both Christian and Muslim sources in Arabic, Greek, Latin, and Syriac gives the work a breadth that is highly valuable in a survey of this sort. At times the organization of the book is somewhat unclear, leading to repetitions such as the recurring discussion of Salmān al-Fārisī, and there are occasionally minor inconsistencies in transliteration. Nevertheless, *Christian Monastic Life in Early Islam* is a valuable contribution to a growing field, bringing an ecumenical perspective to our view of this formative period, with a specific eye to the experiences and contributions of Christian monks in the earliest centuries of Islamic history.

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Carrying on the Tradition: A Social and Intellectual History of Hadith Transmission across a Thousand Years

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GARRETT A. DAVIDSON

Garrett Davidson's new book, *Carrying on the Tradition*, is a significant contribution to the Western study of Sunni hadith. Through detailed analysis of a breath-taking range of hadith books and documentary sources, it identifies key features of hadith transmission that emerged during approximately the fourth/tenth century and were sustained in the Middle East and North Africa until the tenth/sixteenth century. During this period, which Davidson calls "post-canonical," the purpose of chains of transmission (*asānīd*, *isnād*) was radically different from what it was during the first three centuries of Islam, when the canonical hadith books were compiled by scholars such as al-Bukhārī (d. 256/870) and al-Tirmidhī (d. 279/892). This transformation of the role of the chain of transmission had profound consequences on hadith transmission and, as Davidson demonstrates, has led many Western Islamicists to draw erroneous conclusions about hadith scholarship during this period.

The original purpose of the chain of transmission was to document the oral sources for a hadith or report ascribed to early Muslim

authorities. Thousands of these chains can be found in the canonical "six books" of Sunni hadith literature, as well as in other contemporaneous books in multiple genres, such as the *Muṣannaf* of Ibn Abī Shayba (d. 235/849); al-Shāfiʿī's (d. 204/820) *Kitāb al-Umm*; Ibn Qutayba's (d. 276/889) *adab* work, *ʿUyūn al-akhbār*; Ibn Saʿd's (d. 230/845) *Kitāb al-Ṭabaqāt al-kabīr*; and both the Qur'ān commentary and history of al-Ṭabarī (d. 310/923). While a few Western Islamicists have claimed that third/ninth century hadith compilers merely attached chains of transmission to hadith texts (*mutūn*), the fact that *isnād*-based hadith criticism emerged during the early third/ninth century and blossomed in the fourth/tenth century severely undermines this claim. The chain of transmission was the primary (but not exclusive) locus of hadith criticism, and the chains found in the canonical books were carefully studied for centuries and considered the primary source for evaluating the authenticity of hadiths.

However, Davidson has found that the chain of transmission underwent a radical change in the century or so following the compilation of the canonical Sunni hadith books. What was initially a scholarly apparatus transformed into a ritual act of devotion and "a conduit for the spiritual charisma (*baraka*) of the Prophet" (17). Hadith scholars and transmitters promoted an "ideology" that "the chain of transmission was the tie that bound the [Muslim] community to the Prophet and through him to God Himself" (2). No less an authority that the famous scholar Ibn al-Ṣalāḥ (d. 643/1245) declared that in his age "the aim of hadith transmission is the preservation of the chain of transmission" (24). As Davidson astutely notes, Ibn al-Ṣalāḥ's observation was "essentially a declaration of the end of rigorous transmitter criticism." Furthermore, an important objective of this new ideology that emerged in the post-canonical period was to reduce the number of links in the chains of transmission between the transmitter and the Prophet. The technical term for hadiths with few links is "elevated" (*al-ʿālī*), and most of *Carrying on the Tradition* describes the historical consequences that the quest for elevated chains of transmission had on centuries of Sunni hadith transmission.

The first major change was the rise of the composition of audition notices for hadiths and hadith books. An audition notice (*samāʿ* or *ṭabaqa*) is different from an *ijāza*, to which Davidson devotes a separate

chapter, because an *ijāza* is a "mode of non-oral hadith transmission" (50). By contrast, an audition notice serves "simply to document that [named individuals] heard a manuscript [of hadith] read aloud" (51). This manuscript could have been read aloud by the transmitter himself or, more likely, by someone in the presence of the transmitter. Audition notices became very important for the cultivation of elevated chains of transmission because scholars and lay people would often bring their young children to the hadith sessions of an old transmitter so that if the child lived to an old age, they would be able to transmit what they had heard as a child with fewer links in the chain of transmission than their contemporaries. Davidson argues persuasively that this practice of bringing children to hadith audition sessions had little to do with education and served primarily to preserve the chain of transmission and to reduce the number of links in the chains of transmission of hadith books. In other words, transmission of hadith became largely divorced from education and scholarship.

The divorce between transmission and education was further enhanced by the *ijāza*, a term that many Western scholars have misunderstood (109-111). According to Davidson, when the term *ijāza* is used by itself, it refers to *ijāzat al-riwāya*, which is "a permission granted by a transmitter allowing the recipient to cite and further transmit a text or groups of texts through the granting transmitter's personal chain of transmission" (108). It did not authorize the recipient to teach the hadiths or indicate that they had mastery of them; rather it merely allowed a student to add his or her own name to the chain of transmission that this transmitter had for the book. (The *ijāzat al-tadrīs* authorized teaching and, according to Davidson's citation of Devin Stewart, was very rare [110].) The third chapter of *Carrying on the Tradition* is dedicated to elucidating the history of the *ijāza* and its variations, such as the "unspecified *ijāza*," the "global *ijāza*," the permissibility of granting *ijāza*s to young children (under the age of five), and even the question of whether an *ijāza* can be granted to a child that has not yet been born. From the perspective of hadith transmission, Davidson notes that "the issuance of *ijāza*s to children was an important means of creating elevated chains of transmission" (138), and he concludes with the important observation

that "the *ijāza* played a central role in the preservation of the model of the oral chain of transmission after the ideal of actual oral/aural transmission became untenable" (151).

Having identified and analyzed the two most important components of post-canonical hadith transmission, namely the audition notice and the *ijāza*, Davidson applies his findings to the social prestige that elevated chains of transmission conferred upon both lay Muslims and scholars. Due to the divorce between transmission and scholarship, lay men and women could become "hadith rock stars" (163) and even make a small fortune. Among male lay transmitters, the case of al-Ḥajjār (d. 730/1329), stands out (163-165). Abū l-ʿAbbās al-Ḥajjār was an illiterate mason in Damascus who was recorded as attending an audition session when he was very young, such that in his old age, hadith scholars in his neighborhood realized he was the last living link in the chain of an important recension of al-Bukhārī's *Ṣaḥīḥ*. According to the norms of Sunni hadith culture, al-Ḥajjār merely had to sit in the presence of someone reading al-Bukhārī's *al- Ṣaḥīḥ* to an audience of Muslims in order to confer his short chain of transmission for this book upon all who were present. During the final years of his life, political figures and scholars, along with hundreds of laypeople, sat in the presence of the illiterate al-Ḥajjār and listened to a local scholar read his recension of al-Bukhārī's *al-Ṣaḥīḥ* in order to acquire al-Ḥajjār's elevated chain of transmission for this esteemed Sunni book. Like contemporary rock stars, al-Ḥajjār also made large sums of money by attending his own audition sessions, which is further evidence of the cultural prestige of elevated chains of transmission.

Davidson was wise to give the example of the male lay-transmitter al-Ḥajjār before addressing the sensitive issue of female hadith transmitters. Due to the paucity of female authors in Islamic history, there has been a temptation to assume that any Muslim woman who was involved in hadith transmission was a scholar. Davidson thoroughly demolishes this assumption on the basis of his careful analysis of al-Sakhāwī's (d. 902/1497) famous biographical dictionary, *al-Ḍawʾ al-lāmiʿ*, and audition notices preserved in Damascus. He shows that a very small number of female transmitters were in fact scholars, such as Karīma al-Marwaziyya (d. 463/1070) and Zaynab bt. al-Kamāl (d. 740/1339), while the vast

majority of them were lay women. Part of his evidence for this argument is that these female transmitters were only sought out and audited when they were in their seventies and eighties, once their chains of transmission had become shorter than those of their contemporaries. Given that women who survive childbearing generally live longer than men, the Sunni quest for elevated chains of transmission presented long-lived women with an opportunity to become valued hadith transmitters. However, this same culture that valued elevation also did not demand that the transmitter be literate or a scholar, and this fact is reflected by Davidson's finding that female transmitters were always passive participants in their audition sessions and rarely described as having scholarly credentials. In other words, a man read the hadith book out loud to the audience in the presence of the elderly female transmitter, like what we saw above in the case of al-Ḥajjār. This finding is especially devasting for a book such as Mohamad al-Nadawi's *al-Muḥaddithāt: The Women Scholars of Islam* (Oxford 2007), because it means that the vast majority of women mentioned in it almost certainly were lay transmitters who lacked the basic credentials associated with Muslim scholarship.

In chapters five and six, Davidson discusses six genres of post-canonical hadith scholarship that arose during this period of the Sunni cultivation of elevated chains of transmission, each of which contributed to its growth and expansion. These genres are the forty-hadith collection, the *ʿawālī* genre, *mashyakha* and *muʿjam* works, and *fihrist* and *thabat* catalogs. Hundreds of works in these genres were composed, and very few of them have received Western scholarly attention. For example, the *fihrist* catalog appears to have originated in Muslim Spain and the earliest surviving works of this genre, by the exegete and judge Ibn ʿAṭiyya (d. 541/1149) and polymath al-Qāḍī ʿIyāḍ (d. 544/1149), both have been published (256-262). One especially valuable observation Davidson makes in the sixth chapter is that the *thabat* genre initially served to document oral/aural transmission of books before it became synonymous with the *fihrist* catalogue, which overwhelmingly consists of *ijāza*s for books, by the eleventh/seventeenth century.

The final chapter of *Carrying on the Tradition* serves as an epilogue to the book and briefly discusses the decline and modest recovery of the

ijāza in the twentieth and early twenty-first centuries. Davidson ascribes the contemporary renewed practice of documenting hadith transmission among some Muslims to a broad revival of interest in the late Sunni scholarly tradition as well as what he calls "neo-*ahl al-hadith*," which many of us would call *salafī*s, especially in the GCC countries. I cannot help but wonder if the vast network of Deoband seminaries has also played a role in this modest revival too, although this institution is not mentioned in the book under review, which focuses almost exclusively on the Arabic-speaking countries of the pre-modern period.

This book is essential reading for anyone researching Sunni scholarship during the post-canonical hadith period, especially prior to the Ottoman period. It argues convincingly that academics and historians must be careful about making a distinction between hadith transmitters and hadith scholars, given how popular hadith transmission was in public settings during this time and how many participants were laypeople. It also clarifies the core institution of the *ijāza*, which was used primarily to allow the transmission of texts without investing the impractically long time it would take to hear them in their entirety from a transmitter, and it normally did not imply any degree of mastery or comprehension of the texts in question. Finally, it introduces a variety of genres of hadith literature that contributed to the Sunni quest for elevated chains of transmission, several of which, such as the forty-hadith collection and *fihrist* catalog, continued to be produced into the twentieth century.

Perhaps the most important lesson I took away from this social and intellectual history is just how *anti*-intellectual Sunni hadith transmission became from approximately the fourth/tenth century until the eleventh/seventeenth century. Unlike disciplines such as legal theory or *kalām* theology, which engaged with rigorous hermeneutical and metaphysical questions, hadith transmission transformed into a ritual practice involving young children "listening" to men reading hadith books in the presence of old men and women. It involved, even in the twentieth century, hadith scholars defending the presence of jinn or alleged three-hundred-year-old men in chains of transmission. To his credit, Davidson is remarkably non-judgmental about the irrational

aspects of hadith transmission, which often became more of a spectacle than a scholarly practice. Of course, hadith *scholars*, such as al-Dhahabī (d. 748/1348) and Ibn Ḥajar al-ʿAsqalānī (d. 852/1449), produced rigorous scholarship during this time, but this is not the subject of *Carrying on the Tradition*, which focuses on the long-term Sunni venture of preserving elevated chains of transmission, along with scholarly works that supported this endeavor. But, as Davidson notes (74), even though al-Dhahabī the scholar did not approve of children receiving *ijāza*s, he nonetheless took his own three-year old son to get *ijāza*s, because that is what a good father did.

In conclusion, *Carrying on the Tradition* provides a valuable foundation and guide for future research in the history of hadith scholarship and transmission during the post-canonical period. It also indicates the challenges researchers will face examining hadith transmission during the Ottoman period, when audition notices become very rare, although this may be compensated for by the large number of manuscripts that survive from this period. It will also be valuable for a future comparative study of Twelver Shīʿī hadith transmission during its post-canonical period, another vast field of Islamic Studies that remains largely untouched. Finally, Davidson's careful distinction between hadith transmitters and scholars, as well as his clarification of the purpose of the omnipresent *ijāza*, will benefit future studies of Sunni hadith transmission in West Africa, South Asia, and Southeast Asia, regions of the Muslim world which, understandably, lay outside the scope of *Carrying on the Tradition*.

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In Your Face: Law, Justice, and Niqab-Wearing Women in Canada

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NATASHA BAKHT

Bakht's previous work has shown deep insight into the topic of niqab in the West, with strong messages supporting the right of Muslim women to wear niqab and be included as full citizens in Western liberal democracies, while criticizing the numerous assumptions and objections that lead to niqab bans. I was eager to read her new book, *In Your Face: Law, Justice, and Niqab-Wearing Women in Canada.*

The cover is the first sign that Bakht will not disappoint. We are used to the ubiquitous image of an oppressed looking Muslim woman in a black headscarf and face veil appended to irrelevant articles about Muslims or to sensationalized accounts of "Muslim women behind the veil" that exoticize and essentialize all Muslim women as oppressed. The cover of *In Your Face* contrasts with this tradition by having an image of a young Muslim woman whose eyes are obviously crinkled by a smile. We imagine she is grinning underneath her black face veil. The eyes are not sad and downcast (oppressed) nor are they done up in mass amounts of kohl with long lashes (exotic). The headscarf is burgundy coloured, the coat is brown with a green sleeve showing. She holds two fingers up in the V sign, now understood to be a hand sign for peace.

In Your Face is carefully argued, empathetic, full of brilliant insights, with a clear message: let's "create a new vision of society, one in which women's choice of clothing is respected and religious garb is viewed as either irrelevant or, at most, the source of respectful curiosity, opening a window of dialogue that increases mutual understanding" (13). The book has six chapters plus an introduction and a conclusion. Bakht is a legal scholar. Her legal expertise is foregrounded especially in chapters three, four, and five, where she thoroughly examines niqab bans in the courtroom and in legislation. She unpacks western legal systems' dubious reliance on the need for demeanor evidence that is offered as the rationale for requiring Muslim women to remove their niqabs if they want to be part of the justice system, as observer, employee, defendant, or plaintiff. She draws on social science scholarship that shows that our ability to tell if a person is lying by watching the face is little more than a guess (69). Bakht warns us that most of the "objections to women who wear face veils in courtrooms have no real basis" (88) and that "simplistic interpretation of public access to courts has the perverse effect of closing Canadian courtrooms to all niqab-wearing women" (109). She points to the danger of legal decisions that are picked up from one country to another, "reveal[ing] the interconnectedness of Western jurisprudence" (113). Bakht clearly wishes that the few judges who have made accommodations in their courtrooms to allow niqab-wearing women to participate is the precedent that is being circulated, rather than the ones firming up around bans (103-104).

Chapter Two debunks ten common arguments advanced in popular, political and legal discourse for why niqab should not be worn in public spaces. Bakht finds that perspectives arguing niqab is a threat to security, a sign of an inability to communicate, an unwillingness to integrate, hiding identity, signifying women's oppression and Islam's intolerance, contradicting secularism, or intimidating and lacking courtesy are "based on specious logic" (10). She concludes, following Razack:

> When the legal reasoning upon which niqab bans are based is flimsy at best—that is, when law abandons logic and permits consequences that would be considered outrageous in any other

> context—Sherene Razack's contention that niqab bans are a call to Muslim women to yield to sexual and racial superiority rings true. She persuasively argues that the niqab generates a desire to know and possess the woman who is covered. Her refusal to yield to the white Western masculine gaze, to preposterously insist on being "in one's face," then becomes the only credible basis for removing her from sight. (139)

Chapters One and Six bookend *In Your Face* in a special way. Chapter One, titled "Listening to the Voices of Niqab-Wearing Women," contains interviews with four niqab-wearing women in Ontario, five in Québec, and quotes from op-eds, media interviews or affidavits of niqab wearers, and other scholarship based on interviews with niqab-wearing women. Bakht knows that niqab-wearing women's perspectives are usually absent from public and legal debates over niqab bans, so she made the effort to introduce some before proceeding with her analysis. She emphasizes the women's agency in their choice to cover, their religious motivations, and their sense that they are happy wearing niqab, even though they are subjected to hostility in everyday life and the law.

Chapter Six is a clever look at "Niqab-Wearing Women's Resistance in the Face of Oppressive Government Tactics and Popular Beliefs." She gives space to her interviewees to discuss how they deal with anti-niqab attitudes and laws. Zakia relates a story about a woman who stared at her on the bus for so long, finally asking "Can you breathe in that veil?" Zakia replied, "It's only a piece of cloth…It's not stopping any air coming in and out" (145), after which they talked more about niqab. Bakht draws our attention to niqab-wearing artists. She includes a nice photograph of a niqab-wearing woman that does not replicate the common "sullen-faced women in black, gloomily looking down" (154), and a very funny cartoon by British Muslim artist Hannah Habibi of a niqab-wearing woman captioned "Made You Look!" (156).

Chapter Six also includes a section on non-niqab wearing allies (Muslim and non-Muslim). As Bakht rightly says, spotlighting allies is crucial because

> they reassure and support niqab-wearing women who demonstrate incredible courage each day as they confront their very outspoken critics. They reject homogenized projections of oppression and threat onto the bodies of Muslim women. They also help reformulate narratives about niqab-wearing women (as students, as consumers of public services, as rights-bearing members of the community) and they set an important example for other institutions and individuals not to be indifferent or unsympathetic in the face of overwhelming and organized hostility toward a small group of women. Simultaneously, these everyday interactions and micro-practices create an alternative narrative that can sustain a more peaceful and just society. (153-54)

Bakht's respect for niqab-wearing women shines through. Her decision to use the phrase "niqab-wearing women," instead of the more common *niqabi*, is based on her sense that the word *niqabi* reduces a woman to her face-veil, when "they are so much more" (10). She notes that niqab-wearing women are also "mothers, friends, activists, students, consumers, entrepreneurs, athletes, scientists, teachers, and volunteers, among other roles and professions" (167). Bakht says, "Notwithstanding that in Canada there have been multiple niqab controversies, in my interviews with niqab-wearing women, I have been struck by how fulfilled and happy many of the women seemed to be" (146). She does not undermine this by suggesting they have "false consciousness."

In Your Face: Law, Justice, and Niqab-Wearing Women in Canada is very impressive. I wish Bakht had done two additional things: the first is that she had used the perspectives from Chapter One, her interviews with niqab-wearing women, throughout the book, instead of placing them in the first and last chapters alone. A couple of the middle chapters are adapted from previously published work. They are revamped and the book ties together well. They are brilliant and carefully argued. I found myself wishing to know more about what her interviewees thought about the anti-niqab arguments Bakht was examining or the court room practices she was criticizing; to have her interviewees voices whispering throughout the entire book.

Second, the title had led me to hope for an extended analysis of "face." For while exposing the hypocrisy, racism, sexism, illogicality, and unreasonableness of popular, political and legal discourses against niqab are all important, there still stands the deeper issue of why Westerners care about showing the face so intensely. Why do they equate identity with showing the face? Why must we show our faces to be open, tolerant, equal, civilized, and communicating? In the middle of a paragraph on page 74, Bakht asks "What then is in a face?" The question is answered pages later, with a brief quotation from law professor Robert Leckey who views this as being from the New Testament's hymn to Christian charity in Corinthians—"For now we see through a glass, darkly, but then face to face: now I know in part; but then shall I know even as also I am known" (110). I wish she had dwelled on this question more. There is more to "face politics" (see Jenny Edkins' book of this title) than this: there is the social and political construction of the "individual" tied to the rise of capitalism, and there is modernity's conception of knowledge as "objective" and based on the gaze. Unpacking "face politics" more deeply would enhance her excellent analysis.

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The Muslim Resolutions: Bosniak Responses to World War Two Atrocities in Bosnia and Herzegovina

SARAJEVO: CENTER FOR ISLAM IN THE CONTEMPORARY WORLD, 2021. 228 PAGES.

HIKMET KARČIĆ, FERID DAUTOVIĆ, ERMIN SINANOVIĆ, EDS.

In the 1912 tome *Unsere Zukunft: Ein Mahnwort an das deutsche Volk*, Friedrich von Bernhardi once wrote: "war is the highest expression in life of a truly cultured people" (55). This book would argue for a more nuanced view of reality. In 1941 Nazi Germany and Fascist Italy invaded royal Yugoslavia and established a puppet regime called the 'Independent State of Croatia' (*Nezavisna Država Hrvatska*, or NDH). This polity included all of modern Bosnia-Hercegovina and included nearly one million indigenous Muslims. The dictatorship was led by an extremist Roman Catholic nationalist faction who initiated a campaign of brutal violence against citizens of the Serb Orthodox church and others, many of whom then turned their anger towards the mostly unarmed Muslim civilians. A cycle of religio-communal brutality erupted and several Islamic scholars and Muslim leaders signed a number of formal public resolutions: these documents resolutely condemned the bloodshed and

carnage, and called on the authorities to enforce justice and peace, law and order. In retrospect, it was an act of remarkable courage and bravery.

Eighty years later, several Bosnian academics have produced this book to mark the incident, to reproduce the original texts – where extant – and to comment on them. Editor Hikmet Karčić writes: "The aim of this publication is to present this phenomenon to a wider audience, but research on the project started in early 2020, at the height of the COVID-19 pandemic, and has proven more complex than initially anticipated, not least because there appear to be multiple versions of at least some of the resolutions" (11). To use a beautiful German term, the *Schwerpunktbildun*g of this positive endeavour is to inspire readers to reflect on these matters, to examine them more deeply, and then proceed to purposeful action. The comprehensiveness and reliability of the sources concerning these proclamations leave, unfortunately, much to be desired, and they make the task of independent appraisal and elucidation all the more difficult. Unofficial researches to date are riddled with lacunae. Some papers are no longer extant, some have deteriorated, or exist in institutions unwilling to share academic resources in a collegial atmosphere.

This book endeavours to piece together various perspectives and narratives from multiple sources and informants that relate to the traditional ethnic mosaic of pre-war Bosnia-Hercegovina. The editors and contributors believe this will reveal much about the values of Muslim political leadership during this era. Based on substantial fieldwork and a thorough knowledge of sources, they provide an innovative study of the pre-Communist history of Bosnian Muslims and their cultural traditions. The indomitable resolve and sanguine energy of Bosnian Muslim leadership in 1941 is here examined with academic skill, insight, and detachment. *The Muslim Resolutions* elucidates a little-known aspect of the civilization of Bosnia, and unravels the paradoxes and transformations of indigenous Islamic religious identity in the region. It suggests inventive perspectives on the war period, the formation of socio-cultural ('national') identities and the strength of such legacies in Eastern Europe. This book offers a substantial contribution to the study of Islam and Muslim society in the modern era.

This is one of the most significant history books of the year, edited by several outstanding scholars. *The Muslim Resolutions* is especially concerned with the complex role of Muslim leadership in the NDH and how this contributed to ideas regarding Muslim identity. Multiple lines of inquiry by the editors and contributors ignore ideological preoccupations and political correctness, and explore issues of race, religion and nationality without bigotry or prejudice. There are several interesting asides that reveal all too human concerns and proclivities. For instance, the Mostar Resolution actually demands the NDH Fascist regime halt non-Muslims from wearing the fez (180-181). It follows that the kind of civilization which we specifically designate as Bosnian reposes not upon a spurious foundation of alleged race, but on an inheritance of achievement and thought and religious aspiration. Hence the formal Resolutions themselves in 1941 and the events that followed until 1945.

This volume is a multi-faceted examination of social encounters between folk groups of differing faiths but common customs and lands. The editors and contributors argue that such encounters and shared apotropaic rituals can solidify into communal time-spaces. Xavier Bougarel in particular, raises the vexed question of why these events and matters—with their complex collective, class and regional resonances—developed the way they did. He queries what happened when such enigmatic intimacies and enthralling discursive processes were challenged and actively destroyed, when the Muslims were ethnically-cleansed from the rural districts of Bosnia over 1941-1945, and the entire country was parcelled into congeries of warlords and divergent political factions, each governed by an obscure provincial camarilla, all lacking in humility or mansuetude. Considered in all its spectra, this is not a direct discussion of religious syncretism or hegemony, then, but a careful articulation of a complicated societal evolution and the *Bosanski Duh*, the Bosnian spirit or character.

The Muslim Resolutions is a remarkable and comprehensive survey of a complex topic. The text is accessible and will make an excellent introduction to more in-depth material. The broad scope and quick pace make this a definite work, though novices should be able to follow the swirl of names and events. This is a solid work for college classrooms and scholars on the history of Muslim communal leadership, socio-political

consciousness, and our current world. The attention to personal testimonies in this book will, in simple fashion, help students grasp underlying concepts with which outsiders sometimes struggle. This is a comprehensive presentation of a multifarious issue and the text successfully combines expert accounts of the deep history of Bosnia and Herzegovina with a highly erudite investigation of where the society is presently. Drawing upon significant new research, the book greatly advances our comprehension of Muslim responses to the processes of nation-building, religion and war in the 1940s. This tome is an essential addition to the literature for both the general reader and students of Islamic civilization alike.

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Forging Ideal Muslim Subjects: Discursive Practices, Subject Formation, and Muslim Ethics

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FARAZ MASOOD SHEIKH

In the fields of Muslim ethics and comparative religious ethics over the past two decades, embodiment and embodied practices have reigned as rich methodological loci yielding numerous illuminating studies on the nature and process of ethical formation, in large part because of the pioneering work of anthropologist of Islam, Talal Asad. But as is often the case with scholarly methodologies, the pendulum has begun to swing back, in this case towards an interest in theological and philosophical reasoning as crucial to understanding how religious and moral selves are formed—for example, in Thomas A. Lewis's 2016 *Why Philosophy Matters for the Study of Religion & Vice Versa*. Presenting himself as standing firmly in the camp of this nascent trend, Faraz Masood Sheikh offers his *Forging Ideal Muslim Subjects: Discursive Practices, Subject Formation, and Muslim Ethics* as a study of both Muslim and comparative religious ethics that takes the power of ideas and reasoned reflection seriously in ethical formation. Sheikh seeks to demonstrate this primarily through an analysis of the thought of two important and understudied

Muslim thinkers, the ninth-century moral pedagogue, al-Ḥārith ibn Asad al-Muḥāsibī (d. 243/857) and the twentieth-century Kurdish Qur'an scholar, Bediüzzaman Said Nursi (d. 1960).

Starting off, Sheikh states that his interest is in the nature and formation of "*ideal Muslim subjectivity*" through the lens of al-Muḥāsibī and Nursi (1). In his use of the term "ideal subjectivity," Sheikh pulls from the work of French theorists Michel Foucault and Pierre Hadot along with Jewish and comparative ethicist Jonathan Schofer in order to construe ethical formation as a process of discursive engagement with didactic texts which are understood as "technologies of the self" addressing readers as ideal subjects. In this process, which Hadot refers to as "spiritual exercise," the reader enters into a dialogical relationship with the text that is grounded in her experience of the world, a hermeneutical relationship that is highly reflective, personal, and praxis-based, and thus one involving the scrutiny, and, if need be, revision, of her most deeply held commitments (18).

Sheikh states that this approach bears two benefits, one for Muslim ethics and Islamic studies more generally and one for an understanding of ethical formation beyond the Islamic tradition. Regarding the former benefit, Sheikh observes that contemporary scholars have relied heavily on the vocabularies and categories of Islamic law, mysticism, philosophy, and anthropology to analyze Muslim ethical discourses, with the legal and mystical being the most prevalent. The challenge presented by the use of such categories is that many pre-modern and modern Muslim thinkers do not easily fit into one or even more of them, including most notably, al-Muḥāsibī and Nursi. Al-Muḥāsibī is alternately referred to as an "ascetic" and "proto-Sufi" while Nursi has typically been understood as a Sufi thinker or modernist Sufi, yet none of these labels, Sheikh asserts, fully capture the force and nuance of their thought. While it is true that al-Muḥāsibī and Nursi drew on legal, ascetical, and mystical discourses and practices, their thought supersedes them; and perhaps more importantly, attempts to pigeonhole them using the above conceptual framework lead to a mistaken focus on the contents of their writings "without adequate attention to the ways those concepts are situated and *deployed* in [their] discourses and the *practical* work that these ideas

ought to do for the person who would engage with them" (7). Bringing the methodological insights afforded by Foucault and Hadot to bear on al-Muḥāsibī and Nursi remedies this. And regarding the latter benefit, employing the conceptual vocabulary of subjectivity as a means to shed light on the moral thought of al-Muḥāsibī and Nursi brings attention to those aspects of ethical formation that entail the moral agent's reflective agency. Such a position stands at odds with reigning perspectives in the fields of sociology and anthropology which attribute the formation of individuals to ideological structures and bodily practices in ways that marginalize any sense of agency in the process. For Sheikh, there is much to commend in Asad's conception of Islam as a "discursive tradition" and anthropologist of Islam Saba Mahmood's analysis of the role of embodied practices in the women's mosque movement in Egypt; however, he wonders if Asad's focus on the power of authorized discourses and Mahmood's emphasis on repetitive bodily practices leaves any room for individual agency in the process of self-cultivation (19-20).

Sheikh organizes the chapters on al-Muḥāsibī and Nursi according to what he terms their conception of "ideal religious subjectivity" and "ideal moral subjectivity," with the former denoting "the ideal standpoints … that a religious individual's psyche ought to engender" and the latter referring to "the manner and mode in which one's psychic states ought, and ought not, to be consciously and reflectively expressed in everyday lived life and relationships with others" (14). Thus, in chapters two and three, Sheikh discusses both forms of subjectivity according to al-Muḥāsibī while in chapters four and five he does so from a Nursian point of view. According to Sheikh, for al-Muḥāsibī ideal religious subjectivity is ordered around the twin concepts of rights (*huqūq*) and obligations (*wājibāt*), so that the ideal subject is one who properly observes the rights of God (31). In this process, self-examination (*muḥāsaba*) takes on a crucial role because external actions are judged according to whether they are motivated by good or bad "suggestions of the heart" (*ʿinda al-khaṭarāt al-qulūb*). Sheikh discusses a range of "spiritual exercises" or discursive practices which are key to cultivating the ideal religious subjectivity for al-Muḥāsibī, highlighting the pragmatic ways they seek to cultivate reflective agency. These discursive exercises

include contemplating death, reflecting on God's promise of reward and threat of punishment (*al-wa'd wa al-wa'īd*), and holding a proper wariness of Satan. Just as with ideal religious subjectivity, Sheikh states that for al-Muḥāsibī, one's internal state is crucial for ideal moral subjectivity (63). Thus, moral actors must both negotiate social obligations to their families, friends, and fellow citizens as well as attend to the self-care that is required to fend off vicious suggestions that arise from those very interactions (65). A failure of vigilance in these social exchanges can lead to a self-aggrandizing attitude, or *riyā'*, which al-Muḥāsibī refers to as a minor form of idolatry, or *shirk*, because it threatens one's capacity to perform actions for God alone (73). Sheikh notes that al-Muḥāsibī's account of the ideal moral subject differs from contemporary anthropological accounts of ethical formation which emphasize habitual embodied action. He points to al-Muḥāsibī's discussion of devotional actions, which urges believers to be on guard from thinking that the ease with which they perform devotional actions necessarily indicates a virtuous state. That is, one might be able to develop proper bodily habits, but this does not extend to *taqwa*, or God-consciousness, because while one may build some capacity for *taqwa*, one may never think of it as a stable, habitual disposition that one has attained (86-87).

In chapters three and four, Sheikh elucidates Nursi's conceptions of ideal religious and moral subjectivity. For Nursi, ideal religious subjectivity is deeply connected to "belief," or what Sheikh calls "practices of belief" (99). Far from being private and fixed in a way that is divorced from one's experience, "belief" here is better understood as a "contemplative perspective" informed by Qur'anically-guided reflections on and engagement with interior and exterior forms of reality. In contrast to "imitative belief" (Tk. *taklidi iman*) which views the Qur'an simply as a repository of divine revelations, Nursi advocated "belief through investigation" (Tk. *tahkiki iman*), a dynamic, Qur'anically-informed reflective belief which treats the Qur'an as a "direct, living, metaphorically rich, potential personal guide for a person's existential needs and questions" (101). He believed appeals to spiritual authority that one often found among Sufi shaykhs failed to speak to modern, thinking individuals or adequately equip them to confront the materialist and anti-religious aspects of modernity. Rather,

he prepared his audience to "enter into a deep and deeply personal and dynamic *studentship of the Quran*" (101). Thus, as Sheikh explains, Nursi approached Qur'anic concepts such as God's unity (*tawhid*), God's messengers (*rusul*), life after death (*akhira*), and divine predetermination (*qadar*) not as theoretical ideas per se but rather as reflective exercises that produced certain subjective standpoints. Such "practices of belief" hold numerous implications for intersubjective relations, that is, Nursian ideal moral subjectivity. Sheikh explores these in numerous areas which include social implications for certain conceptions of (eternal) temporality, relationships of social exchange, frugality and environmental ethics, the relationship between individuality and communal ties, the nature and social ethics of gender, and the superiority of a life of service to God over political action that all too often results in *realpolitik*.

Synthesizing much of what he has presented in the preceding chapters, Sheikh concludes by highlighting how reconstructions of Muhasibian and Nursian accounts of ideal subjectivity offer insights not only to the fields of Muslim and comparative religious ethics but also contemporary debates about how best to live out one's faith commitments in diverse societies. Intriguingly, Sheikh claims that al-Muḥāsibī and Nursi offer ways of being in the world that are post-identitarian and non-perfectionist in contrast to ideologies that equate being Muslim with a social, ethnic, or political identity. That is, for both, ideal subjects are not expected to attain religious or moral perfection but instead are to constantly reflect on the fit between belief and lived experience in a manner that is neither devoid of conviction nor closed off to the revision of one's moral commitments. As Sheikh writes, "Muhasibi and Nursi show us that the theoretical desire to have unshakeable convictions may be strong and sincere but actual, lived commitments, as subjectively inhabited, will always be fraught—and productive and beautiful for being so" (162). Such forms of subjectivity, Sheikh points out, have much to offer an approach to pluralism that seeks to live in community with those who hold a wide variety of religious and moral commitments without watering down one's deeply held convictions.

In this study of al-Muḥāsibī and Nursi, Sheikh offers a rich, textured, and compelling account of the thought of two profound and understudied

Muslim thinkers that makes bold interventions in the fields of Muslim and comparative religious ethics. And what's more, he does this not only in descriptive and analytical terms but evaluative ones as well, exploring and making normative judgments about how the insights afforded by al-Muḥāsibī and Nursi might offer solutions to contemporary conundrums of ethical formation and public life. The reader even gets the sense, from time to time, that in his unpacking and elucidating of the ways textual discourses functioned for al-Muḥāsibī and Nursi as "technologies of the self," Sheikh intended for the reader's experience to be one akin to a "spiritual exercise." However, this was also connected to a weakness of the study. That is, Sheikh's wide ranging discussion of the multifarious elements of al-Muḥāsibī and Nursi's thought occasionally felt a bit disjointed and lacking in depth. Numerous times, I found myself wanting Sheikh to further develop a facet of al-Muḥāsibī or Nursi's thought or deepen a point he was making. For example, in his discussion of Nursi's preference for service to God over political engagement, I wish Sheikh would have critically engaged Nursi's seemingly apolitical stance which equated politics with the use of force, or as Nursi put it, "bearing the club." Sheikh briefly notes the problematic aspects of this conception of politics but then quickly moves on (155). For an exposition of Nursi's moral thought, it would seem crucial that such a skewed account of the political receive fuller attention. Nevertheless, Sheikh has produced a compelling study of two moral exemplars of the Islamic tradition that makes critical contributions to the fields of Muslim and comparative religious ethics and offers Muslims and non-Muslims alike a mode of being that embraces both the truth *and* fragility of their religious and moral commitments.

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Islam and Psychology: Research Approaches and Theoretical and Practical Implications

Religion and spirituality have increasingly gained attention as resilience factors in mental health, and as common factors in psychotherapy.[1] To this end, Muslim academics and clinicians across the globe have also begun to develop Islamically-integrated therapeutic interventions and services.[2] Nevertheless, this area attracts controversies among Muslim experts from different disciplines such as psychology, psychotherapy, psychiatry, and Islamic theology. For instance, there is still no consensus concerning the definition and kinds of theoretical and practical permutations between the canon of Islamic disciplines and modern psychology.

To address this fundamental question at the level of a conference for the first time in continental Europe, the Islamic Association of Social and Educational Professions (IASE) brought together a group of approximately 65 Muslim students, counselors, therapists, psychiatrists, and Islamic theologians from across Germany, Austria, and Switzerland in Frankfurt am Main on April 6, 2019.

The event aimed at examining the fundamental relationships between Islam and psychology in consideration of the current state of theoretical approaches, Islamic fundamentals and possibilities, as well as challenges of integrating Islamic elements into therapeutic practice. Malika Laabdallaoui (psychological psychotherapist, Rüsselsheim, Germany) officially opened the symposium as organizer and moderator, and handed over to Aaron Abdurrahim Schabel (psychologist, IASE's

chair, Fulda, Germany) for his keynote address. Mr. Schabel highlighted the importance of therapists' self-awareness and identity development, which integrates Islam and psychotherapy as a starting point in counseling and therapeutic process.

The first part of the symposium consisted of three talks discussing basic theoretical concepts, in preparation for the second, more practice-oriented part in the afternoon.

In his presentation on "How to talk about Islam and Psychology?", Paul Kaplick (M.Sc. Cognitive Neuroscience; head of the work group "Islam and Psychology" at IASE, Amsterdam, The Netherlands) gave a concise introduction to the development and current state of theoretical approaches to Islam and psychology. Starting with a historical survey of the movement of Islam and psychology, he called the current phase of the development process "interdisciplinary construction of Islamic Psychology" and reminded the audience of the importance of cooperation between mental health professionals and Islamic theologians. Introducing the three approaches to Islamic Psychology (IP), named *transcultural adaptation*[3], *bottom-up construction*[4] and *top-down construction*[5], he considered the top-down construction to be most suitable for Germany, for which the following working definition of IP was deduced: *The confession-oriented embedding of indigenous psychological, psychotherapeutic, and psychiatric concepts, theories, and methods from the traditional Islamic disciplines and other disciplines such as philosophy and medicine, which were discussed by Muslim scholars, in a contemporary academic psychological reference frame.* He defined, inter alia, the following objectives for the next 10-15 years: (a) clear definition of the terms "Islamic", "psychological", and "theological", (b) determination of multi-, inter- and transdisciplinary methodologies for the integration of disciplinary insights from psychology and Islamic theology, (c) differentiation between Islamic and cultural psychological basics, and (d) the development of Islamically integrative psychotherapeutic interventions with subsequent evaluation studies.

Subsequently, Dr. Martin Kellner (Islamic theologian, Osnabrück, Germany) spoke about the "Entities of Mental Life in Islam". In light of Qur'anic sources, he described the conception of human beings as a

tension between the mysterious and that which is not to be doubted; as unclear, weak, and honorable. Further, he elaborated Qur'anic key terms such as *qalb*, *nafs*, *ʿaql* and *rūḥ*, and integrated them as central elements of the self. Psychosocial factors, emotions, and magic were considered to be further influencing factors on the mental life of human beings. Finally, he discussed the concept of human beings as "a structured, self-regulated, and evolving phenomenon"[6] and indicated that Qur'anic exegesis might be an important resource in order to recognize certain Qur'anic concepts of mental life more diversely.

In his talk on the "Integration of Islamic Elements into Psychotherapy", Dr. Ibrahim Rüschoff (medical psychotherapist; IASE's founder, Rüsselsheim, Germany) presented a top-down approach which is suitable to integrate Islamic elements into psychotherapy, whilst considering the scientific standards proposed by psychologists of religion in Germany. He made the audience aware of the demand for, and risks and challenges of, integrating Islamic elements into scientifically-validated therapeutic methods, and concluded with examples from his practice. In particular, he argued that Muslim mental health professionals in Germany are under the obligation to adhere to German guidelines for psychotherapy[7] as well as general professional standards.[8] While therapeutically-grounded and patient-centered integration of Islamic elements is considered to be effective, he regarded theological discourses in therapy as inappropriate. Moreover, he pointed to the fact that there is no "one and only" Islamic therapeutic approach, and that Western psychotherapeutic approaches are not per se un-Islamic.

Malika Laabdallaoui and Julia Ruff (psychologist, B.Sc. and graduate student in clinical psychology, Trier, Germany) offered a shared presentation on the history and perspectives of IASE. Followed by active exchange on impulses and ideas for an Islamic psychosocial work in the future (e.g. research groups, databases of basic literature, etc.), the next (practice-oriented) session of the conference commenced.

The workshop on "Muslims in Psychotherapy, Psychiatry and Counseling: a Culturally Sensitive Approach" – led by Prof. Dr. Ahmed A. Karim (neuropsychologist, psychotherapist, Tübingen, Germany) – started with an examination of challenges that mental health

professionals have been facing in work with Muslim patients: e.g., distrust of psychotropic drugs, stigma, shame, and attribution of psychiatric diseases to jinns and magic. For handling such challenges, he proposed a culturally-sensitive therapeutic approach, such as the program "Clinical Islamic Spiritual Care" he developed in cooperation with the Institute for Integration and Interreligious Dialogue e.V. Mannheim. Such culturally-sensitive therapy requires knowledge of Islamic theology, etiology of (neuro-)psychiatric disorders, and indigenous psychotherapeutic (e.g., therapeutic communication skills) as well as neurophysiologic techniques. In particular, besides therapeutic interventions, Qur'anic verses on psyche and interactions with jinns as well as neuro- and psycho-physiological indicators including EEG, EMG, ECG, and EDA may increase illness insight and compliance, especially among Muslim patients.

In his workshop "Diseases in the Context of the Body-Mind-Problem in Islamic Theology," Navid Chizari (doctoral candidate in Islamic theology, Istanbul, Turkey) introduced the attendees to basic concepts and methods of Islamic theology such as the ontology of existence, the principle of causality, and sources of knowledge (judgement via intellect, empiricism, and revelation). Under his instruction, attendees first investigated articles of four Islamic scholars[9] and one Muslim psychologist[10] about Islam, knowledge, and nature of human beings. They found out that no distinction was made between Islamic and Non-Islamic knowledge. By applications of methods of Islamic theology, Chizari rather differentiated phenomena to be examined with respect to their kind of existence, which is—besides the existence of God—divided into substances (*jawāhir*) and accidents (*a'rād)* and their interactions with one another. Thereby, psychological diseases are classified as states of substances (i.e., accidents). Further subdivision into secular/rational and religious sciences yields clear limitations for clinicians and theologians due to dealing with diseases: while theologians approach diseases from the perspective of God's Revelation (e.g. Why did God create diseases? How do they affect worship? Which supplications could be supportive?), the science-based treatment of a disease remains a task of the clinician. Finally, he derived three recommendations for the future work of mental health professionals and Islamic theologians: (a) *fard 'ayn:* patients and

therapists should be aware of their responsibilities towards God, (b) clinicians and theologians should know their specific tasks and limits, and (c) expertise does not need religion.

In the last decade, we have witnessed a movement towards integrative approaches to psychotherapy. In the workshop "Islam and Psychology within the Context of an Integrative Psychotherapy," led by Julia Ruff, attendees examined psychotherapy from a meta-perspective and discussed different ways of how integrative approaches were conceptualized in the past, for example through theoretical integration or technical eclecticism. Further, different levels of abstraction—therapeutic techniques, strategies, theories, and meta-perspectives—were discussed. Finally, attendees discussed different concepts of Islamically-integrative approaches to psychology and psychotherapy, and whether they may find a place in a scientific discourse. The process wasn't about imparting the Islamically integrative approaches, but mainly about understanding what makes psychotherapy work. It is important to look at psychotherapy from different levels of abstraction when discussing and developing Islamically-integrative approaches and to take the implications into consideration.

The final session took the form of a panel discussion, which was moderated by Dr. Daniel Germer (child psychiatrist). Dr. Ibrahim Rüschoff, Julia Ruff, Prof. Dr. Tarek Badawia (Prof. of Islamic Religious Education, Erlangen, Germany), Mubarak Kounta (Imam, Rüsselsheim, Germany), Amin Loucif (Psychologist M.Sc., Therapist, Düsseldorf, Germany), Prof. Dr. Ahmed A. Karim, and Dr. Martin Kellner discussed the question of which theological contributions are necessary for an Islamically-integrative psychotherapy as well as which challenges and limitations scientists and theologians may encounter. Addressing the challenge that Muslim patients often hesitate to see a clinician, and instead seek Imams as first point of contact, participants discussed the need for a trustworthy relationship between Imams and clinicians as well as education and training programs for Imams. Chizari pointed to the risk that such trainings might also bring with it the danger of exceeding the level of expertise of the respective teacher. Carrying on with the impact of religious leaders, the education principles of Imams

were critically questioned: Prof. Dr. Karim and Prof. Dr. Badawia pointed to the religions' impact on behavioral change and advocated reward- and coping-oriented religious education to promote a healthy mental development. The discussion developed towards etymology and interpretation of Qur'anic language and resulted in a tension between two views: an assumption of historically relativistic and dynamic development process of interpretation of Qur'anic language, which could be deepened by psychological input, versus the preference of maintaining inherent meanings of the respective words in the Qur'an. The discussion about etymology is of high importance, as an exchange and work within the scope of the intersection between Islam and psychology require clear and uniform usage of key terms and concepts. Coming back to the original question, Julia Ruff advocated a theoretically-grounded integration of Islamic principles into psychotherapy on different meta-levels, which could be enriched by the support of theologians.

All in all, the panel discussion and the conference as a whole were characterized by mutual interest between clinicians and experts of Islamic theology. It ended with the insight that both mental healthcare professionals and religious practitioners need each other.

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Endnotes

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AbdulHamid A. AbuSulayman's Legacy of Intellectual Reform

The death of the 84-year-old scholar and activist AbdulHamid Ahmad AbuSulayman on August 18, 2021, marked the return to Allah of an influential thinker who, well grounded in Islamic traditional thought, strove to address modern problems by historically- and contextually-aware applications of well-grounded Islamic principles. This essay seeks to present an intellectual overview of some of his most important work in a manner that honors the impact he has had on Islamic thought and on Muslim thinkers.

AbuSulayman was born in Mecca in 1936. His 1973 University of Pennsylvania Ph.D. thesis, "Towards an Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought," published in book form in many languages (including English, Arabic, and Urdu) sets the tone of his approach. Before addressing the specifics of his topic, he lays bare the reasons for confusion in Islamic studies in general and sets forth a methodology for resolving it. The problems he exposes and the methods for dealing with them go far beyond the immediate subject of foreign relations and are involved in virtually every contemporary issue confronting Muslims in the world today. The broader issues he raises have been acknowledged by an increasing number of scholars of Islam (as well as activists and statesmen) and have only increased in importance with time.

For AbuSulayman it is Muslim thought itself that is in need of reform, before Muslim practice can even be addressed.[1] Internal factors must be

understood before external factors can be dealt with.[2] Blind imitation (*taqlīd*) lies at the root of Muslim stagnation, but "so-called modern *ijtihād* is not up to the task,"[3] because, in the words of N.J. Coulson, it "amounts to little more than forcing from the divine texts that particular interpretation which agrees with preconceived standards subjectively determined…."[4] In his subsequent scholarly works, in his pedagogy (as Chairperson, Department of Political Science at King Saud University, Riyadh, Saudi Arabia from 1982–1984; and as Rector of International Islamic University Malaysia from 1989-99),[5] and in his intellectual activism (as Chairman of the International Institute of Islamic Thought), he was an important force in pressing for a sound methodology that struck at the root of Muslim malaise.

He repeatedly pointed out pairs of distinct concepts which have been conflated, causing serious impediments to Islamic thought andto the resolution of practical issues. Consider the distinction between fiqh and shariah. AbuSulayman proposed thinking of the Islamic Shariah as the "divine will revealed to the Prophet [saws] pertaining to the conduct of human life in this world" whereas "Fiqh is the body of rules and injunctions deduced from the Qur'an and the Sunnah which contain the divine will as revealed…."[6] Others have elaborated on this distinction. I myself have noted the analogy with natural science in which natural law is the God-given reality while scientific theory is the human attempt to understand and articulate the reality. Thus the Islamic conception of law, as something to be discovered by thoughtful research into the Islamic sources (which include Qur'an and sunnah, but do not exclude social and political scientific study) differs from the Western notion of "positive law" which is mostly a human construct, invented rather than discovered, by "treatise, legislation, or custom, or by moral or religious commitment, or by any combination thereof."[7] It logically follows that Islamic reform must focus on fixing the methodology of its jurisprudence rather than puzzling over "which rule the Muslims should select, approve, or reject,"[8] like some diner confronted with a menu at the Cheesecake Factory.

AbuSulayman lays out the variety of opinions among Islamic schools of thought, not only in their conclusions of various issues, but also on

how such issues should be approached. A false pretense of unanimity, often accompanied by a charge of heresy against dissident views, is one of the obstacles to reform that his candor would surmount. He does not shirk from using differences among the schools on such basic life and death issues as the nature and obligation of jihad, the applicability of Muslim legal punishments to non-Muslim subjects, consequences of Muslims killing non-Muslim subjects, the breadth of eligibility of non-Muslims to enter into protected status (payment of *jizya*), and the breadth of noncombatants prohibited from attack in warfare—all to illustrate that there is no consensus even in classical thinking, thus opening the door for thoughtful analysis.[9] Imam Malik objected to al-Mansur's offer to make his legal opinions (as published in *al-Muwaṭṭa*) the sole legal authority for the state[10] and that the "opinions of Muslim jurists are not and never have been law in the modern sense of the term."[11]

AbuSulayman opposes both a blind adoption of the classical theory and its unexamined dismissal. A sound understanding of the theory is a prerequisite to reform. Thus, he begins his analysis of jihad with a study of the definition of the terms.[12] One of the things that unites Islamophobes and so-called jihadists is the insistence that the classical Islamic political theory divides the world simply into the *dār al-ḥarb* (territories hostile to Islam and threatening Muslim freedom and security), and the Abode of Islam, *dār al-islām* (territories in which Muslims are free and secure). Some Muslim apologists end their defense of jihad with a critique of an erroneous definition which equates it with warfare, arguing that offensive warfare is prohibited in Islam, or that jihad includes all righteous struggle, social and personal, not just (defensive) war. AbuSulayman goes beyond just reformulating jihad to addressing the definitions of *dār al-ḥarb*, *dār al-islām*, and *dār al-ʿahd* (territories autonomously ruled but with tribute paid to the Muslims). AbuSulayman points to confusion sown by those who have been "overly selective in their choices of interpretations of some jurists while neglecting others,"[13] creating a false impression of a juristic consensus that jihad is a permanent obligation to forcibly bring the whole world into *dār al-islām*. He amply demonstrates that there is no consensus on such jihad, as to its permanence or as to purpose. Further, in the context of modern

international relations, the notion of *dār al-ʿahd* could be expanded to include a wider variety of treaties than considered by the classical scholars. One could go even further and suggest that the Treaty of Tripoli between the United States and the Muslim World combined with the First Amendment guarantee of freedom of religion places the US in the category of *dār al-islām*.

Beyond AbuSulayman's clear refutation of methodological errors behind the narrow and offensive conception of jihad, I detect a slyness in his own use of context. In the discussion of jihad, he never mentions the phrase "the sixth pillar" of Islam that propagandists like Muhammad ʿAbd al-Salam Farraj have used for it. Yet, in the previous chapter, he has already identified as one of the few things on which there *is* consensus among the classical scholars is "that the pillars of Islam are five, not four or six."[14] Thus, the jihadists are not merely wrong in accusing the broader Muslim community of violating consensus, but they themselves have violated consensus on one of the most widely known facts about the religion.

Trained in political science, AbuSulayman is aware of the exaggerated importance given to centralized authority by most Muslims. He emphasizes the importance of defining the essential terms: khalīfah (in the Qur'an referring to man's role as God's vicegerent on earth, but in Muslim political thought, successor to Muhammad as *amīr al-mu'minīn*), *amīr al-mu'minīn* (political leader of the Muslim political community), *imām* (spiritual leader of the Muslim community), and *sulṭān* (holder of political power over the Muslim community).[15] AbuSulayman did not shy away from the violent divisions among the early Muslims. Pretending these disputes did not exist is an obstacle to serious scholarship and meaningful reform. He who does not learn from the past is doomed to repeat it. Too many Muslims want to wish away current internecine struggles by saying, "We're just not as pious as the *ṣaḥāba*." Then how to explain the warfare between Ali and Aisha? AbuSulayman clearheadedly accepts that later "the Ummawîs gained the upper hand, as the Islamic elite and the jurists eventually supported them for the reason that they, the Ummawîs were in a better position to maintain the centrality and unity of the Muslim state."[16]

AbuSulayman challenged the bugaboo of *naskh*, the notion that some parts of the Qur'an have been abrogated. The claim that "Verse of the Sword" abrogated up to 140 "preceding verses pertaining to patience (*ṣabr*), persuasion (*husna*), tolerance (*lā ikrāh*) and right to self-determination (*lasta 'alayhim bi musayṭir*)"[17] has been especially harmful to the ummah in the field of international relations. A verse that orders the Muslims to strike back against those who have violated a treaty (after giving them three months to repent) has been stripped of its context to be transformed into a commandment to fight all idolators (all non-Muslims?) and to ignore all the other verses in the Qur'an that would make such aggression *ḥarām*.

Unlike those reformers who merely called for a return to the classical *uṣūl al-fiqh*, AbuSulayman called for a reform of the methodology itself. Like H.A. Sharabi, he felt that the nineteenth-century reform movement was merely "a reaction to the military and political threat of Europe … largely defensive and negative."[18] Like H.A.R. Gibb, he thought Muslim thought was "still dominated by the ideal of authority," merely adding Western authorities alongside the Muslim ones, creating "a confusion of thought.[19] Like Malik Bennabi, he thought the whole modern Muslim cultural movement "is just a passion for new things" that made "Muslim imitators and customers of foreign civilization, thus lacking in originality."[20]

AbuSulayman called this "a space-time problem,"[21] a failure to recognize not only that with "the progression of time and the change of space, the substance and status of social institutions should also change[22] but that the *uṣūl* itself must be reformed. He demonstrated by highlighting the example of Rashid Rida's attempts to deal with apostasy and commercial bank interest. In the former case he was somewhat successful in arguing that as the Qur'an is a higher source of law, its prohibition of compulsion overruled the scholarly consensus that apostasy should be subject to state punishment.[23] Yet, despite concurrence from Jamal al-Din al-Afghani and the Grand Imam of al-Azhar, Mahmud Shaltut, to his argument that bank interest should be permitted only on the grounds of necessity, the "issue of interest is still an issue of tension and dispute, leaving the banking system, and in turn the whole economic system of

the Muslim world on shaky grounds."[24] Unable to pass the *uṣūl* test,[25] his finding failed to motivate Muslims.

To resolve this problem, AbuSulayman called for the "adoption of systematic empirical approaches in the social sciences" to facilitate replacing the traditional legalistic interpretation of the Prophet's policies with political interpretations.[26] Expecting that once Muslims have grasped the actual political motivations behind the Prophet's actions, they would be freed from imagined legal motivations, he offered four examples: the prisoners of war captured at Badr; the expedition against the Banû Qurayẓa; and lenience "towards the conquered Quraysh, the continued respect and tolerance shown to the People of the Book."[27] I find his specific arguments in the four examples often debatable and sometimes problematic, but he has done the ummah a great service in making the attempt. He has shown us the *kind* of discussion we must have in order to critically apply Islamic principles to modern problems without resorting to a superficial imitation of past policies, the rationale of which we do not understand, or abandoning Islamic principles to imitate new policies, the consequences of which we also do not understand but which may be harmful to us in this life and the next.

AbuSulayman's *Crisis in the Muslim Mind* presents his critique of the traditional Islamic methodology. Concerned with the ummah's current crisis, he acknowledges that its roots go back to its early history. Muslims must choose between imitating solutions that spring from the secular materialist West, imitating solutions that served the community in a different time and place, or formulating original "relevant solutions derived from authentic Islamic sources."[28] AbuSulayman's preference for the last, which he calls "the Islamic *Aṣâlah* Solution" is not simply normative. He notes that the other two have both been tried in Muslim countries and failed.

The failure of "the Imitative Foreign Solution" he attributes to its incompatibility with Muslim culture and norms.[29] He cites the example of Turkey, where the failure of well-meaning liberalization led to the fall of the sultanate in a military coup that installed a regime whose commitment to European culture was distinctly illiberal, employing the full force of the state to replace Arabic script with Latin and to force the

masses to adopt Western dress, abolishing both hijab for women and rimless hats for men.

The failure of "the Imitative Historical Solution" he attributes not only to its disregard for "temporal, local, and ummatic considerations"[30] but even more to its "pious assumption of its own infallibility" which makes it "totally intolerant of all parties, approaches, and circumstances that do not agree with it."[31] He cites the especially absurd example of an unnamed prominent twentieth century reformer who concluded that the traditional approach required that only a "just dictatorship" could reform the ummah.[32]

Understanding Islamic history in context and applying it in a different context differs from imitation in that "concentration on, the higher purposes of the Shari'ah and on its general principles, values, and fundamental teachings" becomes "the starting point for contemporary Islamic social thought and for the arrangement of its institutions, organizations, and the regulations that direct and guide its movement."[33] One of the most tragic consequences of the fallacious understanding of *naskh* is the widespread belief that the Medinan verses of the Qur'an abrogated the Meccan verses, whereas in reality eternal principles led to different policies under the vastly changed circumstances. The growing attention paid to the *maqāṣid al -sharī'ah*, the higher principles of Islamic law, is testimony to AbuSulayman's influence.[34]

Most important are his arguments against the misuse of the concept of abrogation, which he says, must be put "back into its proper context" of "abrogation of the messages and *âyât* revealed before the message of Islam was complete."[35] A clear example is the differences in the Prophet's policies between the Meccan period and the early and late Medinan periods. Rather than exemplifying an abrogation of a Prophetic model, the first demonstrates how Islamic principles apply to "oppressed, weak and unequipped nations," while the middle period demonstrates how they apply to a nascent community existentially threatened by outside forces, and the last to a society "that had gained the upper hand."[36] Yet it would be a fatal mistake to take this to mean that Muslims should simply imitate whichever of these three models most nearly matches their current situation.[37] Rather we must understand the principles behind all three

models and apply them in original ways to the unique circumstances in which we find ourselves today.[38]

AbuSulayman emphasizes that "a crisis of thought is not a crisis of belief."[39] This has become increasingly clear in the three decades since *Crisis in the Muslim Mind* was published. Contrary to what secularists would have us believe, it is "the way that Muslims think, perceive, and reason" rather than the "values, objectives, and purposes" of their religion that is the cause of the present crisis.[40]

AbuSulayman offers *ijmā'* (consensus) as an example of a tool that, as traditionally understood, is virtually useless. The only things upon which true unanimous consensus (even among the scholars) is reached are those that are easily argued on the basis of other legal sources, such as a clear and uncontradicted textual source.[41] Instead, AbuSulayman calls for the development of new notion of *ijmā'* based on *ijtihād* (original scholarly effort to understand) and *shūra* (consultation). In a similar vein, he would like to see *istiḥsān* (seeking the good) elevated beyond mere *qiyās* (analogy) into a comprehensive tool that allows "jurist [to] go beyond the particulars of the problems that continually spring up to confront him, and give rulings reflecting the true spirit of the Shari`ah and its higher purpose."[42]

Apart from reforming the traditional tools of *fiqh*, AbuSulayman would like to see social sciences brought into the fold. (He was among those who inspired me to make the same point about including the physical sciences in *fiqh*, as the debate over the Islamic calendar amply demonstrates.[43] He himself directly addressed applying the principles to science and technology in 2002.[44]) Then, the sources of Islamic methodology may summarized as "revelation, reason, and the universe,"[45] which are reflected in the dimensions of "belief, … Islamic thought, and … social behavior."[46] Foremost among the corollaries of these principles, in my humble opinion, is the mandate for freedom of thought.

> In Islamic society, one is free to act according to one's own conscious moral convictions, to make ideological or intellectual choices, and to take decisions on the basis of these convictions and choices. If one is forced to do something of which one is not

> convinced, as it goes against one's nature, then it is Islamic we unacceptable. So, according to Islamic methodology and thought, the final decision rests with the individual, and is related to his or her free will and the choice which it entails, a choice about which he or she alone will be asked, and the consequences of which he or she alone will have to bear in this world and the next.[47]

He finds a bright line between restrictions on human freedom aimed at protecting the rights of other individuals or the general social interests, on the one hand, and "restrictions are imposed on individual freedoms in response to the dictates of special interests," under which "society will fall into the clutches of corruption or the tyranny of those possessed of power and wealth."[48] Indeed, he says, "Tyranny and corruptions are two sides of a coin; each nurtures the other."[49]

It is perhaps a reflection on the controversial nature of the subject that his paper applying his principles to matters involving the penal code is available only in draft form.[50] Again, whatever disagreements one may have with his conclusions, he has asked the right questions. For example, why should the rules of evidence requiring four witnesses in cases of sexual impropriety (e.g., adultery) be imposed in cases of violence against human beings (e.g., rape)?[51]

Almost as controversial as the penal code, and almost as much a matter of life and death, is the subject of economics, which he addressed in a series of articles.[52] I recall a conversation I had with him after I had given a presentation on monetary policy in which I advocated a return to the gold dinar. Demonstrating his political astuteness, he asked me how countries like the Gulf states, which had no gold either in reserves or in the ground, could be expected to back fiat currency with gold. I pointed out that one could always denote a fiat currency in gold but back it by another more readily available commodity, as the old U.S. certificates were denoted as worth a certain amount of gold payable in silver. Thus, a paper dinar issued by a Gulf state could be valued at 4.25 grams of gold but payable in the market equivalent amount of oil. He seemed pleased at the proposal and said he would float it. Alas, nothing ever came of his efforts.

AbdulHamid Ahmad Abu Sulayman has rightly been associated with the concept of the Islamization of knowledge.[53] Unfortunately, this notion has been degraded by those who have taken it to mean either that Muslims should butcher the accumulated knowledge of the world to fit a pre-conceived notion of the "Islamic" or, at the other extreme, to simply rebrand Western knowledge as Islamic on the grounds that it often grew out from seeds taken from the Muslim world. AbuSulayman's understanding of Islamization is "a vision of humankind and *khalîfah* in order to fulfill the responsibilities of Reformation and constructive custody of the earth."[54]

AbuSulayman's legacy combines intellectual rigor with activism for the revival of the ummah. He always worked within an Islamic framework in an inclusive manner. "The intercommunal and international dimension of … fanaticism is an attitude of self-righteousness, contempt, and the lack of concern for non-Muslims (all of whom are believed to be hostile towards Muslims). Such attitudes are not only harmful to communication and interaction between Muslims and non-Muslims but are also destructive to the very foundations of the Islamic mission. The Qur'an says: 'We sent you not but as a mercy for all creation' (21:107) and 'Allah forbids you [Muslims] not, with regard to those who fight you not for [your] faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loves those who are just' (60:8)."[55]

In *The Qur'anic Worldview,* AbuSulayman observed that an effective tool does one no good if one does not know its purpose.[56] The challenge, he was well-aware, was one of education.[57] Now that he is gone from this world, it is up to his intellectual heirs, Muslim thinkers and activists alike, to take a cue from his life and his work to bring about a rebirth of an intellectually vibrant Muslim community that could succeed in this life and the next.

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Endnotes

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33 Ibid., 19.

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